2025:PHHC:072527

219 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28299-2025
DECIDED ON: 27.05.2025

BURA PARDEEP VENKTESHVARLU @ KUNDAN
.....PETITIONER

VERSUS

STATE OF HARYANA & ANOTHER
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. GPS Ghuman, Advocate and
Mr. G.S. Ghuman, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Prayer**

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked seeking regular bail to the petitioner in FIR No. 02, dated 11.01.2025, under Sections 318(4), 319(2), 61(2), 238, 241 of BNS and 66-C and 66-D of IT Act, registered at Police Station Cyber Crime, Kurukshetra.

2. **Facts**

The brief facts of the present case, as narrated in the FIR reads as under:-

"*Copy of complaint, contents of which are as under:- "To the SHO, P.S. Cyber Crime, Sector-8, Kurukshetra. Subject: Regarding fraud of Rs.1,29,42,870/- by making phone calls from mobile No. (97791-953958) claiming as a TRAI officer. Sir, Respectfully submits that I, Sushil Kumar Garg son of late Desraj Garg am resident of House No.02, Sector-01, HUDA*

Shahabad Markanda, District Kurukshetra and I have four children, 3 daughters and 1 son and all my children are married and my younger son Amit Garg lives with his family in Mohali, Punjab. I live in my house at Shahabad with my wife Smt. Prem Lata Garg. I am 79 years old and an old man and I have a MOHAN SINGH RAWAT Krishna Rice Mill situated on Ladwa Road, Shahabad 2025.05.08 14:27 TRUE SCANNED COPY Markanda, in which, we are five shareholders and our Krishna Rice Mil's account number is 50200091640738, IFSC HDFC0001368 and its CC limit account is in HDFC Bank, Shahabad, in which, my mobile No.98123-38929, 98123-38930 are registered and apart from above, I have a commission agent shop in the name of Jhandu Mall Desraj at Shop No.82, New Grain Market. On 07.01.2025, when I was sitting at my commission agent shop, at around 4.40 to 4.50 PM in the evening, I received a phone call on my mobile No.98123-38929 from an unknown mobile No. (97791-953958) and the person on the other end introduced himself as a TRAI officer, without telling me his name, who told me that my phone will be switched off after 2 hours because my phone has been found involved in money laundering and if I want to know more about it then press 9 on my phone. So as soon as I pressed 9, the person on the other end told me his name is Vijay Khanna, IO, he is calling from CBI Mumbai. An FIR of money laundering has been registered against me at P.S. Colaba, Mumbai and do I have an account in Canara Bank, Malad, Mumbai, I said no, then he said that an account has been opened in Canara Bank in Malad, Mumbai in my name and Aadhar card No.809178519967 and illegal transactions have taken place in it. A person by the name of Naresh Goyal of Jet Airways has defrauded the public money of Rs.540 crores through accounts of his agents and out of that money, Rs.2 crore has been deposited in my account in Canara Bank, Malad, Mumbai. So, he has to arrest me and "he or produce before the Supreme

Court and in 2 hours, he will send the local police to arrest me and put me in jail here. He told me not to tell anyone about this because it is a national secret and there is a punishment of five years on breaching it. Thereafter, he asked me to go to a separate room at home and I went to a room in the house. Thereafter, I got a video call and he said that if I do not want to go to jail, then I will have to write a request letter, one in the name of Chief Justice of India and the other in the name of Chief IO, CBI. I wrote both the letters and sent on above said WhatsApp numbers. On their request, I told them about my age and my diseases. Thereafter, they introduced me to their senior IO and Chief IO. On their request, I gave them the details of all my properties and bank accounts. They said that I have to appear virtually before the Supreme Court tomorrow on 08.01.2025 at 9.00 AM and appear with my Aadhar card and in white dress. They instructed me not to talk to anyone. They kept an eye on me through video call all night. They made me sit on a chair the next day on 08.01.2025 at 9.00 AM and Senior IO Gupta started pleading on my behalf before the CJI. They by giving reference of my age and my illnesses, requested that he be allowed to do priority investigation. CJI said that I will get exemption after verifying all my funds and ordered RBI to verify the funds of my Krishna Rice Mill up to 11 year within 48 hours and present it again. Thereafter, they sent me a copy of the order of Supreme WhatsApp and sent the details of accounts of Supreme Court on my WhatsApp. The A/c No. 239605000485, IFSC ICIC0002396 of ICICI Bank provided by them was in the name of JD Silver, Rajkot, Ranchhod Nagar, in which, on 08.01.2025, I deposited Rs.55,42,870/- through RTGS from A/c No.50200091640738, IFSC HDFC0001368 of my Krishna Rice Mill, which is a CC limit account in HDFC Bank, Shahabad and another payment of amount of Rs.74,00,000/- was deposited through RTGS, total of Rs. 1,29,42,870/- for verification on their asking. They said that my money will be *verified and returned back to my account within 2 days. They said that I have followed the order of the Supreme Court, so they will get me bail tomorrow on 09.01.2025. The next day, Senior I0 again argued before the CJI, Supreme Court and he asked to verify the funds of my commission agent shop Jhandu Mall Desraj as well. I told him that first of all, my funds of Krishna Rice Mill will be returned, only then I will get the funds of my commission agent shop Jhandu Mal Desraj verified. Thereafter, they sent me a copy of order of the Supreme Court on WhatsApp and said that if I do not deposit these funds, I will be arrested right now. I refused to give the money, so they got an arrest warrant issued from ED and sent it to me on WhatsApp. When I told this to my family members, everyone told me that this fraud is going on with me. Thereafter, they deleted all the orders of Supreme Court and arrest warrant issued by ED and they also disconnected the video call and the number from which the video calls came are not with me right now, which I will give you later. 1 lodged a complaint on 09.01.2025 on Online Cyber Portal 1930 with complaint No.31301250001818. Above said persons through mobile No. (977 91-953958) by claiming as a TRAI officer, Judge of Supreme Court and Senior Chief IO, have cheated me for the total amount of Rs. 1,29,42,870/- Therefore, it is respectfully prayed before you to take legal action against the above mentioned name, address and unknown number and get my Rs.1,29,42,870/- back to me. It would be your act of great kindness. Sd/- Complainant Sushil Kumar Garg son of late Desraj Garg, resident of House No.02, Sector-01, HUDA, Shahabad Markanda, District Kurukshetra, Mob. No.98123-38929. Today, on receiving of complaint No.31301250001818 dated 09.01.2025 at police station, from the contents of complaint, on finding the offence under Sections 61(2), 318(4), 319(2) of BNS to be made out, FIR No.02 dated 11.01.2025 under Sections 61(2), 318(4), 319(2) of BNS was registered at*

P.S. Cyber Crime Kurukshetra. Thereafter, due to odd hours, after checking the police case file alongwith original complaint, same has been kept with me by me, ASI and further investigation will be carried out. Copies of FIR are being sent to senior officers via DAK. Entry of record has been made as per due procedure. FIR has been registered in the presence of ASI Sunil Kumar No.282."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is further submitted that the FIR has been misused by the police officials as a means to harass and exert undue pressure on the petitioner in order to compel compliance with their unjustified demands. It is asserted that no recovery was made from the petitioner during the raid. Moreover, not a single rupee was transferred to the petitioner's account, nor was the petitioner the individual who contacted the complainant or instructed the transfer of the alleged amount. The sum of Rs.40,000/-, claimed to have been recovered from the petitioner, is in fact the pension amount belonging to the petitioner's father, which was withdrawn on 05.02.2025.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner in Court today, which has been taken on record. He opposes the present petition and seeks its dismissal on the ground that an amount of Rs.40,000/- was recovered from the petitioner, which is alleged to be the commission received by him. It is further submitted that the petitioner is an active member of a gang involved in defrauding individuals by making fraudulent calls.

4. **Analysis**

Be that as it may, considering the fact that the petitioner is a person of clean antecedents, who has suffered incarceration for a period 3 months and 19 days, as of now; added with the facts that in the present case challan stands presented on 25.03.2025 wherein, the prosecution has cited 12 prosecution witnesses and charges are yet to be framed, which is suffice for this Court to infer that the conclusion of trial would take considerable time for which the petitioner cannot be detained behind the bars for an indefinite period.

Reliance can be placed upon the judgment of the Apex Court rendered in "***Dataram versus State of Uttar Pradesh and another", 2018(2) R.C.R. (Criminal) 131***, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

> *"2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.*
>
> *3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the*

exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of

Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416: 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658

6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

Therefore, to elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in "***Balwinder Singh versus***

<u>State of Punjab and Another", SLP (Crl.) No.8523/2024.</u> Relevant paras of the said judgment reads as under:-

> *"7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.*
>
> *8. It is not for nothing the Author Oscar Wilde in "The Ballad of Reading Gaol", wrote the following poignant lines while being incarcerated:*
>
> > *"I know not whether Laws be right,*
> > *Or whether Laws be wrong;*
> > *All that we know who be in jail*
> > *Is that the wall is strong;*
> > *And that each day is like a year,*
> > *A year whose days are long."*

5. **<u>RELIEF:</u>**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on him furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

In the afore-said terms, the present petition is hereby allowed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

27.05.2025
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*