



217 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-46840-2024

Date of decision: 24.02.2025

AKHILESH KUMAR TIWARI

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Kumar, Advocate for the petitioner.

Mr. S.K. Panwar, Addl. A.G., Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 483 BNSS, 2023 seeking regular bail in case bearing FIR No.126 dated 07.04.2016 under Sections 406/420/120-B of IPC (Sections 467/468/471 IPC added later on) registered Police Station Sushant Lok, Gurugram, District Gurugram.

2. The brief facts of the case are that an application was moved by the complainants by alleging that Ritu Raj Tiwari, also known as Akhilesh Kumar Tiwari (petitioner herein) fraudulently promised the complainants that they shall get a flat on Ground Floor in The Ram Shanti, Cooperative Group Housing Society Ltd. situated at Plot No. GH 19, Sector 52, Gurgaon. The petitioner was introduced to them by Shri Ajay Singh Jakhar, who told them that Ritu Raj (petitioner) is the Owner/Partner of the said society. Believing his representation to be true, they met Ritu Raj Tiwari @ Akhilesh Kumar Tiwari (petitioner). In first week of September, 2014 he made them to believe that one Satish Arora is an outgoing member in the aforementioned society, who would be paid all the dues which have been paid by him till that date and



his mother Smt. Kamla Bhan shall be inducted as a new member in his place in the society. He further represented that the flat on the ground floor of which Shri Satish Arora is the allottee, shall be given them when they pay the amounts payable to Satish Arora and other demands of the Society. Hence a sum of Rs. 10,00,000/- (Rupees Ten lacs only) was paid in cash to Ritu Raj on 07.09.2014 for which he issued the receipt under his signatures on the printed receipt of the said society bearing receipt No. 211. Accordingly, after about a month a cheque for Rs. 45,00,000/- (Rupees Forty Five Lacs only) dated 06.10.2014 drawn on Andhra Bank in favour of The Ram Shanti CGHS Ltd. was issued by his mother Smt. Kamla Bhan for which Mr. Ritu Raj issued the receipt under his signatures. Besides an additional sum of Rs. 25,00,000/- was also paid in cash on 06.10.2014 for which Ritu Raj issued the receipt under his signatures on the printed receipt of the said society bearing receipt No. 210. Ritu Raj also asked them to give a cheque in favour of Stanford Hospitality (India) Pvt. Ltd. for Rs.12,00,000/- (Rupees Twelve Lacs only) which they issued on 07.10.2014 and Ritu Raj issued the receipt for that also under his signatures dated 09.10.2014. Dharam Vir is a Director in this company. After receipt of aforesaid amounts i.e. Rs. 92,00,000/- (Rupees Ninety Two Lacs only) Ritu Raj gave them a share certificate dated 01.10.2014 purportedly issued by President & Vice President of The Ram Shanti Cooperative Group Housing Society Ltd. showing as having been signed by Dharam Vir (President) and Randeep Singh (Vice President). After handing over the said share certificate, he also handed over a letter dated 13.10.2014 through Ajay Singh Jhakhar purported to be issued by Asst. Registrar, Cooperative Societies, Gurgaon, stating therein that earlier member Satish Arora has become an 'outgoing member' in the aforementioned society, who would be



paid all the dues, which have been paid by him till date and his mother Smt. Kamla Bhan shall be inducted as a new member in his place in the society and that the flat on the ground floor of which Shri Satish Arora is the allottee, shall be given to the complainants, when they pay the amounts payable to Satish Arora and other demands of the society. Hence, in all till date, the complainants have paid a sum of Rs.1,04,00,000/- (Rupees One Crore and Four Lacs only) by way of cheques and also in cash and the receipts for the entire amounts paid to the petitioner, from time to time have been issued by himself, while some of the cheques were demanded by him in his own name and were, therefore, issued in his name only. As stated above Mr. Ritu Raj, through Ajay Singh Jakhar, gave them a letter dated 13.10.2014 purported to have been issued by the Assistant Registrar, Co-operative Societies, Gurgaon addressed to the President of The Ram Shanti CGHS Ltd. purporting to confirm and accord approval of the Resolution passed by the Managing Committee of the said society for permitting Satish Arora as "outgoing member" and his mother Smt. Kamla Bhan as an "incoming member". On inquiry, they came to know that no such letter exists in their record and/or was never issued by the said govt. department. They also came to know that Satish Arora never received any amount for relinquishing his membership nor has he ever relinquished his membership of the society at any point of time and his right to get the possession of the flat, represented to be sold to them, is subsisting. Hence, the FIR (*supra*) was registered.

3. Learned counsel for the petitioner *inter alia* contends that the FIR (*supra*) was registered on 07.04.2016. Thereafter on 07.04.2016, the petitioner was joined in the investigation pursuant to a notice issued in this regard and 08 years have passed since the registration of the FIR (*supra*), the petitioner was



never called by the jurisdictional police authorities nor arrested. Even, petitioner was never declared as proclaimed offender by any competent Court of jurisdiction in the FIR (*supra*). Surprisingly, after 08 years, the petitioner was arrested in the present case when in some other case, this Court has called the affidavit of the Commissioner of Police. Further, as per the allegations contained in the FIR (*supra*), out of the alleged amount, only Rs.7,00,000/- has been deposited in the account of the petitioner, whereas rest of the money has been duly reflected in the accounts of the society and the other office bearers, who are responsible for the day to day affairs of the society, have not been arrested till date. Even, the main accused, namely, Dharam Veer @ Maggo has not been arrested by the jurisdictional police authorities for the reasons best known to them and the petitioner has been made a scapegoat. Furthermore, the petitioner is behind the bars since 24.01.2024. Out of 20 prosecution witnesses, only 02 have been examined till date and the case is triable by the Magistrate.

4. Learned State counsel has filed custody certificate in the Court today, which is taken on record and *per contra*, opposes the grant of regular bail to the petitioner on the ground that the complicity of the petitioner has been duly established during investigation and he is beneficiary of the amount deposited in his account for which, he has no explanation to offer. He further submits that the petitioner has played an active role in cheating the complainant. The petitioner is also involved in one more case. However, he could not controvert the fact that the petitioner is behind the bars since 24.01.2024 and out of 20 prosecution witnesses, only two have been examined till date.



5. A two Judge Bench of Hon'ble Supreme Court in '***Satender Kumar Antil v. CBI***' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 24.01.2024. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 02 out of 20 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.



7. As far as the issue of the petitioner being a habitual offender is concerned, the Hon'ble Supreme Court in *Prabhakar Tewari vs. State of U.P. 2020 (11) SCC 648* and *Maulana Mohd. Amir Rashadi vs. State of U.P. and another (2012) 2 SCC 382*, has categorically held that the grave and serious allegations leveled against the accused or pendency of other cases against him cannot be the only basis to refuse the prayer of bail.

8. In view of the above, the present petition is allowed. Thus, without commenting upon the merits of the case, lest it may prejudice the outcome of the trial, the petitioner-Akhilesh Kumar Tiwari is ordered to be released on regular bail during the pendency of the trial on furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

February 24, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

- | | | |
|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |