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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46748-2024

DATE OF DECISION: 16.01.2025

SAHIL

...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Manoj Pundir, Advocate with
Mr. Shalender Rana, Advocate for the petitioner(s).

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of B.N.S.S. for grant of regular bail to the petitioner in case FIR No. 95, dated 11.04.2024, under Sections 379-A, 420 IPC and Added later under Section 120-B,34, registered at Police Station: Radaur, District Yamuna Nagar.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘Copy of Complaint as under:- To, SHO Sahib, P.S. Radaur, District Yamuna Nagar, Respected Sir, it is requested that I am Sachin Gadwal son of Mahabir Singh, resident of Village Bhodia Khera, P.S. City Fatehabad, District Fatehabad. I am doing agriculture work. Around three years ago, I used to work for Sale of Flipkart and Sahil son of Karambir, resident of Jandil Kalan, District Fatehabad was my partner. Sahil worked along with me for approximately four months and thereafter Sahil left this work. Our money dues were unsettled and in this regard, I called Sahil



on regular basis. In the month of March, 2024 he told me that we have one scheme in which you will get double the amount you invest. I told my relative Vinod son of Rishal Singh, resident of Bhodia Kalan, P.S. Fatehabad, District Fatehabad about the scheme. Thereafter in the month of March, 2024 the aforesaid Sahil came along with Vakil @ Vikki Godara son of Rameshwar, resident of Village Bhodia Bishnoian, presently Shekhupur District Fatehabad to meet me at Sector 17 HUDA, where our meeting was held. Vakil @ Vikki Godara and Sahil told us that they have one scheme of converting one note into two. They had already got their notes doubled from Yamuna Nagar many times, we got greedy and after meeting, on dated 23.03.2024 I and my relative namely Vinod and Sahil and Vakil @ Vikki Godara, Vinod @ Choti son of Om Parkash, resident of Bhodia Khera Fatehabad started our journey to Yamuna Nagar around 10.00 o'clock in Sahil's Car No. HR26-ES-0043 Mark Endeavour Colour Black and at about 3 o'clock we reached Mustafabad, Yamuna Nagar where one person known to Vail Vikki came there on black Scorpio vehicle bearing temporary number whose name was Rohit son of Rattan Lal village Gandapura and he took us to one village on his Scorpio and our car was parked before village In one shaller where we were made to sit in Chobara (top floor room) of house and there five to six persons were also present who know to Vikki and Rohit. Where one plain paper bundle show to us and a few papers were taken it and put into a box of chemical between two mirrors after covering with silver paper and after some time they collect back and after ironing they turned into 100/100 notes and some notes of 500. The total amount of Rs. 9000/- which were taken from outside and total Rs. 11,000/- handover to us and Rs. 11,000/- cast took from us. When we used those notes at petrol pump, bazaar and Bank which were found to be original notes. Thereafter we got greedy and on dated 31.03.2024 I took cash Rs. 6 lakh rupees and aforesaid Vinod took Rs. 5 lakh fifty thousand rupees cash and came to Radaur with Vakil @ Vikki Godara and Sahil and Vinod son of Rishal Singh and Vinod @ Choti on Shail' car and we stopped near Saini Dhaba Radaur where Vakil @ Vakki called Rohit there. Three persons



along with Rohit came there on white Venue Car. Vikki left our car after talking with Rohit and sat in Rohit's car and signaled us to follow. We follow them and Sahil drove us to Kanson side and on the river bridge one boy left their car and sat with us and told us to follow. After crossing river bridge of Kanson one Swift Car was parked near the room alongside the road which number, I do not remember. Near the car stood one Sardar in Khakhi Turban about 22 years and one more person aged about 45 years who was carrying file and they checked Venue Car and let it go and thereafter stopped and checked our Car and found 11 Lakh 50 Thousand in a bag and after checking the bag asked us from where did you get this much cash in code of conduct period. They forcibly took our bag of cash and ran away from the spot along with the boy who sat in our car on the river bridge. We chased the car but failed to catch them. Thereafter, we came near the Venue Car and stopped them. We alleged that those were your men but they denied. Thereafter, Rohit and another boy told us that give us two days' time. But we will take legal action otherwise refund your money back. After one hour of heated arguments outside the police station we left the place and we told to Vakil @ Vikki and Sahil to give our money back but they linger on the matter. Later on, we came to know that Sahil and Vakil @ Vikki along with Rohit and other persons have cheated us by doubling our money and they snatched our money with conspiracy. Legal action be taken against the aforesaid persons. Sd/- Sachin Gadwal son of Mahavir Singh, resident of village Bhodia Khera, P.S. City Fatehabad, District Fatehabad, Mobile 81680-88805, verified by ASI Bhupinder Singh No. 648 YNR.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case as there is unexplained delay of 11 days in lodging the FIR. He submits that the



petitioner did not receive any amount from snatched money, moreover, admittedly the petitioner was not amongst the boys, who had snatched the money from the complainant and others. He contends that investigation qua petitioner has been completed and challan has been presented in the Court on 05.06.2024 and charges are yet to be framed, therefore, the trial is likely to take time and thus, no useful purpose would be served by keeping the petitioner behind the bars as no recovery is to be made from the petitioner. He further submits that the petitioner is not involved in any other case, meaning thereby he is not a habitual offender.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 9 months and 1 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the car used in the crime in question has been recovered from the possession of the petitioner but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 9 months and 1 day, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, there is unexplained delay of 11 days in lodging the FIR, no further recovery is to be made from the petitioner and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable



doubt, whereas in the instant case, challan stands presented on 05.06.2024 charges are yet to be framed, out of 10 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 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 “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

5. Decision:

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

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

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

16.01.2025
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>