



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

208

CRM-M-63034-2024
DATE OF DECISION: 07.01.2025

AJJU ALIAS AJHAD

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Satish Chaudhary, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 439 Criminal Procedure Code 1973 with a prayer for regular bail to the petitioner in FIR No. 79 dated 13.06.2024 under sections 419/420/467/468/471/34/120-B of Indian Penal Code, 1860 registered at Police Station Cyber Crime, Nuh District Nuh.

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

‘Sir. it is submitted that I Dilbag s/o Noor Mohammad r/o Rithath PS Pinagwan District Nuh and is Ex-Sarpanch. Which appx.2/3 days ago I received a call on my mobile no. 9813361019 from mobile no. 9253438429 who told his name DSP Shamsher, I was already known to DSP Shamsher, I thought that the same DSP Sahab is speaking, which I had no conversation with DSP Shamsher for many days and mobile no. of DSO Shamsher was deleted from my mobile. I asked the person calling from mobile no. 9253438429 about well being of



*understanding DSP after being told well he switched of phone. I checked on my whatsapp then found photo of DSP in uniform on mobile no. 9253438429 and true caller also depicts name Shamsher Singh DSP and photo of DSP in uniform was installed. Thereafter next day call came from the above said mobile no. and said that brother I am feeling shame saying to you, there is problem in my family which I am in sudden need of Rs. 95,000/-, you please transfer Rs. 95,000/- in my SBI Bank account No. ***0870. Which I will return your money back on next day. I taking up caller of mobile no. 9253438429 and being understood as DSP Shamsher transferred cash Rs. 95,000/- from phone pe no. of my younger brother Mubarik vide UTR NO. 416475531715 which I gave Rs. 95,000/- cash to my brother Mubarik. Afterthat next day DSP Shamsher made call and demanded money again, I doubted over his talking that this person is not Shamsher and some unknown person has committed cheated with me posing as fake DSP Shamsher Person posing as bogus DSP Shamsher on calling from mobile no. 9253438429 who cheated with me, strong legal action should be taken against him and my Rs. 95,000/- should be recovered. Note - screen shot phone pe, whatsapp chatting and screenshot of true caller are hereby attached. Sd/- Dilbag s/o Noor Mohd. r/o Rithath PS Pinagwan District Nuh dated 13.06.2024.'*

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. He submits that as per the allegations, the complainant has been cheated of Rs. 95,000/- due to impersonation as DSP whereas the petitioner has been nominated by the other co-accused person involved in this FIR.



He has argued that the amount in question was not transferred from the account of the complainant into the account of the petitioner and he has no concern with the alleged offence. He has further argued that the antecedents of the petitioner are clean and he is not involved in any other case.

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 4 months and 1 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the allegations of cheating are levelled against 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. 4 months and 1 day, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 11.09.2024 charges are yet to be framed, out of 11 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

07.01.2025
anuradha

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