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2025:PHHC:074952

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28959-2025
DECIDED ON: 29.05.2025

SHAHID ALIAS SAHID KHAN

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nafees Ahmad Khan, Advocate
for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of Bhartiya Nagrik Suraksha Sanhita 2023 for grant of Regular Bail to the petitioner in FIR No.57 dated 01.09.2024 (Annexure P-1), under Sections 319(2), 318(4), 61(2), 308(2), 308(6), 204 of Bhartiya Nayay Sanita, 2023, Police Station Cyber Crime, Hisar, District Hisar.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

> *On 01.09.2024, a complaint was received on NCCRP portal 21308240036236 dated 31.08.2024 Complainant Satbhushan Jain whose statement is - I am Dr. Satabhushan Jain, son of Shri Dhankumar Jain, residing at Model Town, House No. 279, Hisar. My mobile number is 9416135977.On August 9, 2024, I received a nude video call from the number 9584386167, which 1 recorded on my screen. Following this,*

> *I received calls from numbers 9434540764 and 9109857884, where the callers claimed to be police officers. They informed me that the girl who made the video call had committed suicide and that her family was demanding one crore rupees. From August 14, 2024, to August 31, 2024, these individuals extorted approximately I crore 20 lakh rupees from me, which I transferred to their various bank pees. From August 14, 2024, to August 31, 2024, accounts via cheque and RTGS.I request that action be taken against these individuals and that my money be recovered. Sincerely, Dr. Satabhushan Jain whose investigation was carried out by ASI Anil Kumar 233/ Hisar Police Station Cyber Crime Hisar in relation to the complaint, statement of the complainant was recorded whose forced imprisonment is statement."*

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as he has not committed any crime as alleged by the prosecution. He further contends that the petitioner was nominated as an accused in the instant FIR only on the basis of disclosure statement of co-accused. It has been contended on behalf of the petitioner that the petitioner is not a habitual offender as he is not involved in any other case. He further asserts that the petitioner is in custody since 11.09.2024 and after completion of the investigation, challan stands presented to Court on 29.10.2024, charges have been framed on 20.12.2024 and out of total 25 prosecution witnesses none has been examined so far, meaning thereby, the conclusion of the trial will take long time.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record.

She seeks dismissal of the instant petition on the ground that the petitioner allegedly facilitated the arrangement of the account for the co-accused, in which an amount of Rs. 1.34 crore was transferred from the account of the complainant.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 08 months and 17 days added with the facts that the petitioner was nominated as an accused in the instant FIR only on the basis of disclosure statement of co-accused; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate produced today before this Court by learned State counsel; investigation is complete, wherein after framing of charges on 20.12.2024 out of total 25 prosecution witnesses none has been examined so far, which is suffice for this Court to infer that the conclusion of trial shall take considerable time, this Court is of the considering view that detaining the petitioner behind the bars for an indefinite period would serve no purpose.

Also considering the fact that no recovery is to be effected and the trial is yet to commence, there appears to be no risk of the petitioner absconding from the trial proceedings or tampering with the evidence. Therefore, detaining him behind bars for an indefinite period would be unfair, unjust, and in violation of Article 21 of the Constitution of India.

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 State of Punjab and Another", SLP (Crl.) No.8523/2024.*** 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. **RELIEF:**

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

29.05.2025
Poonam Negi

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