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2025:PHHC:068478



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

**CRM-M-26977-2025
DECIDED ON: 21.05.2025**

BALRAJ KAUR ALIAS MAHI GILL

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rohit Singla, Advocate and
Mr. Abhay Gupta, Advocate
for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the second time under Section 483 of BNSS for grant of concession of regular bail to the petitioner. in FIR No. 86 dated 03.04.2024 for offence under Section 406, 420, 120B IPC and 24 Immigration Act registered at P.S. Mataur, SAS Nagar.

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

“Copy of complaint bearing no.7097/P/SSP dated 19-12-2023 from Dr. Jarnail Singh Gill village Mksudra Tehsil Payal Ludhiana 9814389378, "To, Subject: regarding complaint against Visa Land Mohali, application bearing no. 2400880AIGNRI SAS NAGAR PUNJAB POLICE Respected

Sir, it is requested that my son Manpreet Singh Gill resident of village Mksudra has applied for Canada P.R. through The Visa Land SCO 523-524 2nd Floor Sector 70 Mohali. They gave us time period of six months but even after passing of one year they didn't provide us any information. Regarding this they have taken Rs. 5 lac 20 thousand and we have receipts of the same. Further, when we tried to get back our file related documents, they started abusing and further pushed us. Regarding this we gave complaint at NRI wing Mohali. Therefore, they were called there and they compromised the matter with us and further promised that they will pay the amount within one month. They gave us Rs. 1 lakh on the spot and then after number of visits they gave us Rs. 70,000 on 22 Sept, 50,000 on 3 October, 60,000 in October and 60,000 on 9 December and Rs. 1,70,000 is still pending. Receipts have been attached. Sd/- Dr Jarnail Singh Gill resident of village Mksudra Tehsil Payal Ludhiana 9814389378", Copy of complaint bearing No. 249/PAC/SSP dated:- 16/01/2024 from Karandeep Singh Gill son of Kuldeep Singh resident of House No. 2680 phase-07 Mohali, SAS Nagar, "To, SSP, district SAS Nagar. Subject: - regarding fraud and duping money on the name of sending abroad. It is submitted that I, Karandeep Singh son of Kuldeep Singh resident of House No. 2680, Phase - 7, Mohali, district SAS Nagar. I have paid Rs 5,05,000 to The Visa Land SCO 523-524 2nd Floor Sector 70 Mohali for sending me abroad Canada as a P.R., they have neither send me abroad nor returned my money. Regarding which I have given the complaint bearing No. 6325/PAC/S.S.P. dated 08.11.2023 and therefore our compromise was executed between parties for Rs. 4,95,000/-. Company has issued me cheque bearing No. 733594 dated 15-12-2023 amounting Rs. 4,95,000, and the same was dishonoured when presented in bank. After that company returned me Rs. 2,50,000 in two instalments. Now they are not returning my pending dues, kindly take an

appropriate legal action against the accused and justice be done.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was a junior employee responsible for collecting documents from clients for visa processing. He further contends that the petitioner was not involved in making false assurances about Canadian Work Permits or PR, nor did she receive payments from clients based on such assurances, who was never in contact with the company owner, Nishan Singh, except for receiving her salary. It has been further asserted that the petitioner had no role in cheating the complainants of the amount they have alleged nor the petitioner was beneficiary in any manner of the amount paid by the complainants to the company, as is evident from bank statements of the petitioner (Annexures P-6 and P-7). Moreover, as per the challan, no other accused has been arrested including the main accused. He further argues that nothing has been recovered from her. He further argues that the bona fide conduct of the petitioner can be appreciated from the fact that when she came to know about multiple FIRs against her and the company, she herself contacted the police to clarify her role and surrender thereafter on 07.11.2024.

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. He seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as she is involved in multiple cases of similar nature.

4. Analysis

Be that as it may, considering the custody period undergone by the petitioner i.e. 06 months and 07 days added with the facts that the petitioner was a junior employee and was only responsible for collecting documents from clients for visa processing as well as considering the petitioner's bona fide conduct as is evident from the fact that upon knowing about multiple FIRs registered against the company and herself, she immediately contacted the police to clarify her role and voluntarily surrendered on 07.11.2024. Also, the fact that investigation is complete, wherein after framing of charges on 25.02.2025, out of total 14 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.

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.”*

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “***Baljinder Singh alias Rock vs. State of Punjab***” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner

are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of concession of bail.

5. **RELIEF:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on her 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.

21.05.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No