

2025:PHHC:015693



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

302

CRM-M-4344-2025
DECIDED ON: 03.02.2025

NISHANT KUMAR SAXENA

...PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. KDS Hooda, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 483 of BNSS, 2023., has been invoked 2nd time by the petitioner for the grant of regular bail to him in a case bearing FIR No. 253, dated 27.10.2023, under Sections 120-B, 420, 467, 468 and 471 IPC, registered at Police Station Sushant Lok, District Gurugram.

2. Facts

Prosecution story set up in the present case as per the version in the FIR read as under :-

"To, The Commissionerate of Police, F-244UM, Shanti Nagar Shivaji Nagar Sector-11 Gurgaon- 122018 Sub: Complaint against accused persons for commission of various offences such as cheating, forgery, cheating by impersonation, making false documents, using forged documents as genuine, etc. under

Indian Penal Code as well as penal provisions of other laws applicable in India. Respected Sir, That I, Sourabh Abrol, am working as Manager - Financial Crime Investigations and the authorized representative of The Hong Kong and Shanghai Banking Corporation Limited, India, a banking Company incorporated under the Companies Ordinance of the Hongkong Special Administrative Region (HKSAR), having its registered office at 1, Queen's Road Central, Hongkong, having its India Corporate Office at 52/60, Mahatma Gandhi Road, Fort, Mumbai - 400 001 and a branch office located at JMD Regent Square DLF Phase II, Gurgaon- Mehrauli Road, Gurgaon-122001 (hereinafter, "the Bank"). The Bank is engaged in conducting banking business in India under the aegis of Reserve Bank of India. We are requesting you to kindly register an FIR against the unknown persons for misappropriation of money, criminal breach of trust, cheating, forgery, and fraud, offences have been committed by these persons in conspiracy with each other and in a planned manner to defraud HSBC by an amount of Rs. 2, 08,87,798 (Two Crores Eight Lakhs Eighty-Seven Thousand Seven Hundred and Ninety Eight) as on 20 July 2023. The cases were identified during regular collection follow ups where the customers were not contactable. It was noted that these suspects had projected employment with Samsung India Electronics Private Limited (Samsung India) and were receiving salary in their HSBC savings account from an account 510101007235670 named as "Samsung Salary Payment" held in Union Bank of India (UBI). It is suspected that this UBI account does not pertain to Samsung India and has been created to mislead the bank into believing that the suspects are employed with Samsung India. During account transactions review, it was noticed that post salary credits, the entire amount used to be immediately withdrawn through ATM by these suspected individuals. An internal review of records revealed that these suspects have opened 38 savings accounts with HSBC India.

Post opening the savings accounts and basis their existing relationship, these suspects managed to avail 28 credit cards and 3 personal loans from the bank between December 2022 to June 2023. An individual namely "Sachin Kathuria (Sachin)" posing as Head of Human Resources at Samsung India Electronics Private Limited, Two Horizon Centre, 20th Floor, Sector 43 Gurgaon, had approached 2 bank staff - lamrul Hague and Hardik Rana (designated as Assistant Manager Corporate Employee Banker in Plot No 68, Sector 44, Gurgaon) on different occasions, to open savings account of various individuals who as per Sachin had recently joined the aforesaid company. @amrul Haque and Hardik Rana are the bank officials, and their prime responsibility is to meet the customer face to face and sight the original KYC documents of the customer, who apply for banking products from the Bank. They claimed having visited previously mentioned office address in Gurgaon and met with the 38 individuals face to face and sighted their original KYC documents, to open their saving accounts and obtained self attested photocopies of their KYC documents. On further review, several irregularities were noticed in the accounts and all the account holders were non-contactable. During visit to the residence address, available in bank records, the addresses were found to be untraceable. Adding to the shock and surprise of the Bank, while reviewing the photographs of account holders, it was noted that 8 individuals have prepared falsified KYC documents with dual/multiple names and have managed to open 17 savings accounts. Details (count) of respective savings account, credit cards and personal loans, sourced by respective staff are hereunder: Bank Official Name Savings Account Credit Cards Personal Loan Qamrul Hague 20 16 2 Hardik Rana 12 9 1 Rahul Kasaudhan 2 2 - Chetanya Kumar 4 1 - It seems apparent that accused persons including but not limited to previously mentioned individuals, in pursuance of pre-meditated criminal conspiracy

with other unknown accused persons, used to prepare falsified KYC documents under the pretext of arranging credit facilities and loans for their personal needs. These falsified documents were then passed to bank officials, to open savings accounts and gain financial benefits. Both Master and VISA credit cards were issued to the suspected fraudsters by the bank. The credit limit in credit cards and loan amount in personal loans were sanctioned based on their income credited in respective savings accounts, assuming employment with Samsung India. This complaint is being filed by the Bank against Sachin and unknown accused persons for commission of various offences under Indian Penal Code and other relevant statutes. The accused persons entered into a criminal conspiracy in order to illegally obtain and misappropriate amounts in excess of Rs. 2, 08,87,798 (Two Crores Eight Lakhs Eighty-Seven Thousand Seven Hundred and Ninety-Eight) by causing wrongful losses to the Bank while illicitly enriching themselves in the process. It is suspected that the accused persons may have similarly attained illegal monies from other banking financial institutions, thereby causing huge loss to these institutions as well as negatively impacting the entire industry and economy as such. In wake of the same, it is critical as well as vital that a thorough investigation is conducted by your good office to apprehend the accused persons and punish them appropriately under the prevailing penal laws. The Bank shall be duty bound to assist you in the course of your investigation as and when directed to do The Hongkong and Shanghai SO. For Banking Corporation Limited, India sd/- Sourabh Abrol Manager, Financial Crime Investigations Mobile 9999107606”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case being known to one Raj

Lohiya @ Raju @ Sachin Kathuria, who is the prime accused in the present case. It is further submitted that the said Raj Lohiya told the petitioner that he got sanctioned a loan of Rs.20,00,000/- in his name but by mistake his name has been wrongly written as Nishank, who further asked the petitioner to withdraw the money at different points of time. In fact the petitioner handed over the amount to Raj Lohiya.

Notice of motion.

On behalf of the State

On the other hand, Mr. S.S. Panu, Addl. AG, Haryana 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 has suffered incarceration for a period of 8 months and 1 day only, as of now. He prays for dismissal of the present petition asserting that an amount of Rs.20,00,000/- stands transferred in account of the petitioner, implying that he has allegedly engaged in cheating with the complainant bank. He informs the Court that in the present FIR after framing of charges on 12.11.2024, out of total 22 prosecution witnesses none has been examined so far.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner, who is a person of clean antecedents, as is evident from the custody certificate, added with the fact that after framing of charges on 12.11.2024, out of total 22 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial shall take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose

and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt.

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 law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed 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 subject to his furnishing bail/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

03.02.2025

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