



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46238-2024
DECIDED ON: 27.02.2025

SUDESH KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mudit Johar, Advocate and
Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

Mr. Tanvir Singh Attariwala, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C./483 of BNSS, 2023 for grant of Regular Bail to the Petitioner in Case FIR No.0318 dated 02.12.2023 (Annexure P-1), under Sections 120-B, 204, 419, 420, 467, 468, 471 of IPC registered at P.S.: Sector-14 Gurugram, District Gurugram.

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

In the court of Chief Judicial Magistrate, Gurugram Dharamveer son of Sh. Sunil Kumar resident of VPO Sitto Gunno Tehsil Abohar, District Fazilka, Punjab applicant/complainant in the case of COMI 200864/2023 1.

Vikas Bishnoi son of K.L Bishnoi resident of House No. 200, Sector 38, Gurugram Mobile No. 9711000029, 2. K.L Bishnoi son of Devi Lal resident of H No. 215, sector 14, Gurugram Mb. No.9811400029, 3. Karna ram son of Teja ram resident of Village Baap, Tehsil Falaudi, Zila Jodhpur, Rajasthan Voter card epic No. RJ/ 24/ 190/ 144323, 4. Chandarbhan resident of Village Lohavat, Tehsil Falaudi, Rajasthan, Mb. No. 8875374811, 5.Sudesh Kumar S/O Dharamveer Singh resident of H.No. 1361, Housing Board Colony, Sector 9, Gurugram, 6. Narendra Sharma S/O I.R. Sharma resident of H.No. 63, Sector 22, Huda Market, Gurugram, 7. Naurang Tehsildar, Gurugram, 8. Neelam Sikka W/O Raj Kumar Sikka resident of H.NO. G-4, Ramesh Nagar, Ratan park, West Delhi, 9. Raj Kumar Sikka resident of H.NO. G-4, Ramesh Nagar, Ratan park, West Delhi, 10. Ashok Kumar S/O Chaman Lal resident of H.No. B-37, First floor, New Multan Nagar, Delhi, 11. Estate officer-I, HUDA, Ajay Malik, 12. Estate officer-I, HUDA Tarun Pawaria, 13. Estate officer-I,HUDA Sajeev Kumar, 14. Estate officer-I, HUDA Vivek Kalia, 15. Sh. Anoop Bishnoi S/O Bhupendra resident New Defence Colony, New Delhi, Mb. No. 9810909090, 9999990103, 16. Suraj Bhan S/O Prabhu Dayal resident of Harsaru, Gurugram accused under section 406, 420, 465, 468, 467, 471, 120-B place area jayvakva, Sector 14, Gurugram. A case dated 08/11/2023 against the accused Kishan Lal Bishnoi, Vikas Bishnoi, Tarun Kumar Pawriya Estate Officer, Sudesh Kumar S/O Dharamvir and other estate officers of HUDA department has already been filed for the sale of the plot of the deceased Sunil Kumar by impersonating him (Sunil Kumar) under FIR No. 249/2023 U/s 420, 465, 467, 468, 471, 120-B, IPC in P.S. Sector-14, Gurugram. I, Dharamvir s/o Sh. Sunil Kumar, applicant, am a resident VPO Sitto Gunno Tehsil Abohar, District Fazilka, Punjab. Is that my father's younger brother (chacha) Late Sandeep Kumar s/o Late Sh. Krishan Kumar was a resident of VPO Sitto Gunno Tehsil Abhor, Zila Fazilka, Punjab who died on 1/07/2004. He got and owned a plot in Huda with Plot No.

4772, Sector 23, 23A on 12/01/1996 with allotment letter no. 4839 dated 12/04/1996 sector 23, 23A of area of 1 kanal. After his death in 2004, my uncle's brother-in-law, K.L. Vishnoi, kept visiting his place. He was well aware of the fact that my uncle is dead and that he owned the plot. K.L. Bishnoi and Vikas Bishnoi contacted officers in HUDA department, namely Estate Officer-I HUDA Ajay Malik concerned clerks under HUDA Department and J.E. HUDA department working in the year of 2007. K.L. Bishnoi and Vikas Bishnoi together plotted a conspiracy and offered that they will pay a huge amount to all of them in the HUDA office against the sale of the plot. They impersonated my late uncle Sh. Sandeep Kumar who died in 2004 through Sh. Karna Ram and Chander Bhan. The JE HUDA department allotted the possession certificate on 19.12.2007 which had forged signatures of Late Sandeep Kumar signed either by K.L. Bishnoi or Vikas Bishnoi or asked someone to do the same. Vide application dated 28.04.2016 the possession certificate has been issued on this also K.L. Bishnoi and Vikas Bishnoi forged the signatures and appended the same. In this way, Estate officer-I HUDA Tarun Pawariya, got monetary benefit by using a PAN card of Chander Bhan and a driving license of Karna Ram which never were matched Sandeep Kumar and got it issued and K.L. Bishnoi and Vikas Bishnoi for the issuance of the NOC of the plot forged the signatures of my uncle Sh. Sandeep Kumar on date 19/02/2016. On 26/02/2016 both of these individuals presented a Notarized affidavit of Late Sh. Sandeep Kumar and on 31/01/2017 Estate Officer-I HUDA Vivek Kalia sent a letter of Demand Payment to the address given by the accused K.L. Bishnoi and Viaks Bishnoi. The Estate officer-I HUDA of that time Vivek Kalia did not bother to match the signatures on the Allotment letter and application and the original form on which Late Sh. Sandeep Kumar had actually signed and the application, the affidavit documented in 2004 after his death presented by K.L. Bishnoi and Vikas Bishnoi did not match either and that to change the plot number mentioned above in 2007 after the death of Sh.

Sandeep, my late uncle K.L. Vishnoi, Vikas Bishnoi and Anoop Bishnoi presented this to HUDA office with a conspiracy in mind by all of them to get the possession of the land somehow. And with the help of these HUDA officers they got a new plot number assigned that is 4737 BSP, sector 23, 23A. Then to get conveyance deed, Vikas Bishnoi wrote his Mb. No. 9711000029 and forged the signatures of Sh. Sandeep Kumar and applied for the conveyance deed which on 31/10/2017 became a conveyance deed on which PAN No. mentioned is EDQPK5523M has a picture of Anoop Vishnoi's driver Chander Bhan, however, driver license has a picture of Anoop Vishnoi's house guard/ housekeeper Karna Ram and the name mentioned is of Sh. Sandeep Kumar. These documents have forged and different signatures of my uncle done by K.L.Bishnoi and Vikas Vishnoi. Tehsildar Naurang Kumar intentionally did not pay heed to such a clear difference in the photos as well as the signatures and took a massive amount in return to register the conveyance deed. For getting the Conveyance deed executed Sudesh Kumar, Narender Kumar and Vikas Bishnoi appeared as witnesses which has photos of Vikas Bishnoi and Suraj Bhan and Karna Ram who impersonated Late Sh. Sandeep Kumar. This conveyance deed was received by Vikas Bishnoi and his mobile No. is also mentioned on the stamp paper. That, previously also Sudesh Kumar and Narender appeared as witnesses when asked by K.L. Bishnoi and Vikas Bishnoi for conveyance deed and Karna Ram who impersonated Sunil Kumar and Karna Ram and Chander bhan, all three are Anoop's guard, housekeeper and driver and has an FIR lodged with FIR no.249/2023 P.S Sector-14, Gurugram. Estate officer-I HUDA Ajay Malik and Sajeev kumar and Tarun Pawariya and Vivek Kaliya did not compare any signatures done on the original Allotment form by Sh. Sandeep Kumar and fake documents, affidavits, PAN card and driving license and took a massive amount of money and conspired with K.L. Bishnoi and Vikas Bishnoi and sent the signed Allotment letter to the address given by these two

individuals to the HUDA officers. Then an application dated 05.02.2017 was given for execution of supplementary deed with the signatures of Sandeep Kumar was handed to Estate officer-I HUDA Vivek Kalia on 20/12/2017 by Estate officer-I HUDA Sajeew Kumar. Then Vikas Bishnoi and K.L. Bishnoi sold this plot to R.K. Sikka, Neelam Sikka and Ashok Kumar by filling a form of Rs. 5000 and seeking permission with a conspiracy with Estate Officer-I HUDA by giving huge amount of money to these officers. They transferred it to the names of R.K.Sikka, Neelam Sikka and Ashok Kumar which was possible only after the conveyance deed registry and the government fees that has to be paid for transferring was done in cash with challan form having the mobile No. of Vikas Bishnoi. Whosoever, since 2004 after the death of Sh. Sandeep forged his signatures, impersonated him for his land and robbed him financially in crores and frauded him are all in a conspiracy together. Anoop Bishnoi helped them by asking his driver and guard to impersonate Sh. Sandeep Kumar. The money they got from selling the plot was distributed amongst all of them who are Anoop Vishnoi, K.L. Vishnoi, Vikas Bishnoi and officers from HUDA mentioned above and witnesses. They conspired for this offence it is a big gang and in FIR No. 249/2023, P.S Sector 14, Gurugram Anoop Bishnoi asked his guard Kirta Ram to impersonate Late Sh. Sunil Kumar and Anoop is a cousin brother of Sandeep Kumar and Sunil Kumar. Also, that in a fraudulent manner the plot was sold to Neelam Sikka and Ashok Kumar, Raj Kumar through Re-allotment letter. Sudesh Kumar verified fake Sandeep. Affidavit, indemnity bond and registry all are missing from the file as officers from HUDA have misplaced them and now only few documents are available on the file. I requested the HUDA Department Sector 14 on 20/09/2023 also to file a lawsuit but nothing has been done so far. All of them conspired against my late uncle using fake conveyance deed, documents and have defrauded us with crores of Rupees. I lodged another FIR against them for selling my father's plot after his death bearing FIR No. 249/2023 P.S Sector 14,

Gurugram that applicant had already submitted an application of same nature to Estate officer, HUDA and sent to Police Commissioner, Gurugram 22692/ CP/2023 dated 08/11/2023 and to S.H.O., Sector 14, Gurugram, EH0212889621N dated 08/11/2023 through speed post as S.H.O. denied to accept the application. All accused have a big gang and they have sold many other plots in the same way with the help of policemen and HUDA officers. Accused have a huge administration running as all are together in it impersonating the dead in front of the buyers telling them that they are the owners of the plot and after selling the plots, the money as earned is distributed amongst themselves. However, no legal action is being taken against the accused. The applicant is pressurized to take the complaint back by the police and HUDA officers saying they would not take any action on the same. Hence, I request you to lodge an FIR u/s 156 (3) Cr.P.C and get lodged an FIR under section 406/420/465/467/468/471, 120B IPC through which the accused will be punished. date 21/11/2023 applicant Dharamvir s/o Sh. Sunil Kumar, resident VPO Sitto Gunno Tehsil Abhor, Zila Fazilka, Punjab through counsel Nitesh Yadav and Aman Singh, Gurugram. On the above, as per the orders of Sh. Anil Kumar Yadav JMFC GGM (UID No. HR-0415) vide COMI-1670-2023 COMI/200864/2023, orders under Section 156 (3) Cr.P.C. having been received in the Police station, FIR under sections 420, 467,468,471,120-B was registered. The copies of the FIR taken through computer and shall be sent through post to the Ilaka Magistrate and other officers. The case file has been given to SI Krishan Kumar 237 for further investigation. This FIR has been registered in the presence of SI Krishan Kumar 237.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner is merely a witness to the conveyance deed and is in custody since 09.05.2024.

He further contends that co-accused Jeevan Ram has already been granted the concession of bail by the trial Court on 21.06.2024. It has been contended on behalf of the petitioner that his custodial interrogation is not required at this stage as the evidence involved in the instant FIR is documentary in nature.

On behalf of the State/complainant

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He along with Mr. Tanvir Singh Attariwala, learned counsel for the complainant seek dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in another case, wherein he is not on bail.

4. **Analysis**

Be that as it may, considering the custody period i.e. 09 months and 17 days for which the petitioner has suffered incarceration; the petitioner is only a witness to the conveyance deed as has been admitted by learned counsel for the complainant; nothing is to be recovered from the present petitioner as the evidence involved in the instant FIR is documentary in nature whereby admittedly investigation is complete, challan stands presented to Court on 18.07.2024, charges have been framed on 31.08.2024 and out of total 17 prosecution witnesses only 03 witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of the trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 “**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.

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. **DECISION:**

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

27.02.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No