



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

109

CRM-M-2682-2025
DATE OF DECISION: 28.01.2025

BIMLA

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Dr. Deepak Jindal, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 483 of Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 (Earlier under Section 439 of the Code of Criminal Procedure 1973) for grant of Regular Bail to the petitioner in case FIR No.487 dated 09.07.2023 (Annexure P-1) under Sections 406, 420, of Indian Penal Code 1860, registered at Police Station Indri, District Karnal.

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

‘Copy of the complaint is as follows:- To, Sh. Anil Vij, Home Minister, Haryana Government, Chandigarh. Police Station Indri, District Karnal. Application for taking legal action against Sonu Mobile No.80533-80553 son of Somnath,



resident of village Hinori, Tehsil Indri, Bimla Devi, Mobile No.89301-25475 mother of Abhishek and Abhishek son of unknown, resident of village Jamb, Tehsil Nilokheri, District Karnal. Sir, it is requested that the applicant is a permanent resident of village Hinori, Tehsil Indri, District Karnal. That the above accused Bimla Devi does work in sending people to abroad. That in September 2022, the above accused Sonu met with the applicant and said that the above Biimla does work sending people in abroad and the accused Sonu called Bimla Devi to the applicant's home and deal was fixed for Rs.5 Lacs for the applicant's husband Sanjeev Kumar send to Canada. The accused collect the photocopy of Aadhar Card, PAN Card and Family ID of husband of the applicant through online. On That on 07.10.2022, the above accused Bimla Devi and her son Abhishek came to the applicant's house and took Rs.3 Lacs in cash and promised to get a work visa in 20 days. That on 29.09.2022, the accused for opening the account got Rs.20,000/- for file expenses deposited online in the account number 922010003036437 of his son Abhishek and Bimla Devi took Rs 15.000/- in cash for opening the account. That on 20 January 2023, the above-mentioned accused Bimla Devi demanded Rs. 14,000 for the Embassy, which was deposited in the HDFC Bank account number 501100032141453 of Jyoti Kapoor. In this way, the above-mentioned accused Bimla Devi grabbed a total amount of Rs.3,49,000/- from the applicant. But till date the applicant's husband has not been sent abroad. The applicant is asking the above-mentioned amount from the above-mentioned accused. So, the accused Bimla Devi and her son Abhishek threaten that if the money is asked for, they will commit suicide. Abuse the applicant and threaten to kill the applicant and her husband. That when we called the accused Sonu but the accused Sonu also did not pick up our call, in this way the above three accused have conspired and duped us of Rs.3,49,000/-. All the above accused repeatedly threatens to kill us. Hence, you are



requested to kindly take action against these three accused and get our money back. Thanking you. Sd/ Anju, Anju wife of Sanjeev Kumar, resident of village Hinori, Tehsil Indri, District Karnal, 9728134163, 8397926421. Police proceedings XXXXXX.'

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 the petitioner never took money from the complainant and no offence under the aforesaid Sections are made out against her. He further submits that the petitioner has been roped in this FIR merely on account of her son involvement in a criminal case and no direct role is attributed to the petitioner. He points out that that the petitioner is not involved in any other case, meaning thereby she is not a habitual offender, therefore, prays for grant of regular bail to the petitioner.

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 21 days. He is not in a position to produce any incriminating material against 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 21 days, antecedents of the petitioner are clean, meaning



thereby she 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 25.10.2024 charges stands framed on 02.01.2025 out of 8 prosecution witnesses, 2 PWs have 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 Nimesh 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 her 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

28.01.2025
anuradha

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No