



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CRM-M-60683-2024
DATE OF DECISION: 07.02.2025

REKHA ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.K. Sharma, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita 2023 (BNSS) for granting the regular bail to the Petitioner in the F.I.R no. 0391 dated 16.09.2023 (Annexure P-1) under sections 406, 420, 370 IPC 1860, and Section 24 of Immigration Act 1983 (Section 370 of IPC deleted and Section 34 IPC added later on) registered at Police Station Israna, District Panipat.

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

'To, the Superintendent of Police, Panipat, Incharge Sir, SIT, Panchkula. Subject: Complaint against Rohit son of Sh. Satyawan resident of village Brahman Majra, Tehsil and District Panipat 74041 34948, 70155 56182 regarding cheating by conspiracy for sending abroad, fraud of rs. 13,80,000/-by preparing fake documents and for giving threatening to kill on demanding money back & taking an action. Sir, it is submitted that I am Anil Kumar



son of Satpal resident of village Jondhan Kalan District Panipat and law abiding person. In the month of October, 2022, abovesaid accused came into my contact, who told me that he was doing the business of immigration of children and assured me that he could send me to Australia. I told about the same to my family members. The accused met my family members and to assure me he made my talk with some persons on phone. The accused demanded Rs.23,50,000/- to send me to Australia and told that i would have to pay Rs.2,60,000/- in advance and remaining money would have to be paid as instructed. We believed the accused and paid Rs.2,60,000/- cash on 17.11.2022 and Rs. 11,00,000/- cash on 21.04.2023. The accused gave an affidavit in this regard. Accused also took my documents. After some days, accused came to our house and took Rs.20,000/- cash from us on the pretext that ticket of your son was confirmed and he would take him to Delhi in a day or two and from there he would send him to Australia. The accused took me to Delhi in the month of June 2023. The accused also showed some documents but in the night accused told me that there was some problem and would have to wait for some more days, I would have to again apply for Visa. Thereafter, I returned to my house. But till date, I did not get Visa. Whenever i contacted the accused, he made one or the other excuse. Now, some days ago, i also asked the accused to return my money if he was unable to get Visa, upon which the accused flew into rage and abused me and my father and said I will not give back your money and if you will demand money or will take any action, then I will kill you and your family. That I have apprehension of danger of life to me and my family from the accused. So, you are requested to take strict legal action against the above said accused by registration of case and my life and property be saved from the accused and justice be given. I shall be thankful to you. Dated 08.08.2023, applicant Anil Kumar son of Satpal resident of Village Joghhan Kalan, District Panipat, Mobil no. 8307824962.xxxxXXXXXXXXXXXX



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 as the petitioner was not named in the present FIR as well as the affidavits executed by main accused Rohit, rather she was nominated in the present case only on the basis of the disclosure statement made by main accused Rohit.

He has argued that the petitioner has constructed the house in the year 2012 and the first floor of the house was constructed in the year 2019 with the money sent by her husband namely Sanjeev and not by the money of the complainant. 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 6 months and 15 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail. He refers to Annexure R-4 i.e. photograph of house of the petitioner to submit that the house was built in the year 2019, with the duped money of the complainant, sent by petitioner's husband, moreso, the petitioner is involved in one more FIR, meaning thereby, she is a habitual offender, therefore, prays for dismissal of the petition.



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. 6 months and 15 days, moreso, the photograph referred by the State Counsel is not a conclusive piece of evidence as it is not corroborated by any opinion from expert. This Court is of the view that this issue can only be decided by the Trial Court after conclusion of the evidence 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 17.09.2024 charges stands framed on 20.11.2024 out of 19 prosecution witnesses, none has 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 *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 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 the concession of bail.

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

07.02.2025

anuradha

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*