



253 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-21327-2025 (O&M)  
DECIDED ON: 25.04.2025

RAJESH KUMAR @ RAJU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Aditya Sanghi, Advocate with  
Mr. Pradeep Bhardwaj, Advocate  
for the petitioner.

Mr. Surender Singh Pannu, Addl. AG, Haryana.

**SANDEEP MOUDGIL, J (ORAL)**

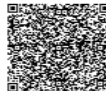
1. **Prayer**

The jurisdiction of this Court under Section 483 BNNS, has been invoked for grant of regular bail to the petitioner in FIR No. 298 dated 08.08.2024 registered under Section 406, 420, 467, 468, 471, 120-B IPC (also under Sections 316 (2) & 318 (2) BNS), P.S. Sirsa Sadar, District Sirsa, Hayana.

2. **Facts**

Facts as narrated in the FIR reads as under:-

*“The facts, in brief, are that the present FIR was registered on the complaint of Sanjay Jain son of Gyan Chand Jain, resident of Suratgaria Bazar Sirsa, in which he stated that that he is doing the work of Commission Agent under the name and style of M/s Sanjay Kumar & Com. for the last several years. The accused (applicant) who is the proprietor of the firm Shiv Traders approached the complainant with a proposal to start a Rice Mill*



*in August 2022 and allured him that he will run the rice mill properly, at this, the complainant asked him that he has no knowledge about rice mill and he is doing the work of Commission Agent. At this, applicant said that he had been working with Vipin Singla in Singla Industries for many years, due to which he has acquired all the knowledge of running the rice mill smoothly and assured the applicant that he will himself run the rice mill in every way and will hand over the share of profit to the complainant, for every year. On the assurance of applicant, the complainant accepted his proposal for opening a rice mill and thereafter, the applicant introduced the complainant with the other accused in connection with the said rice mill and all the three accused under a well planned conspiracy caused financial and mental harm to the complainant and to unjustly enrich themselves kept contacting the complainant. Then applicant and complainant signed a partnership deed on 01.10.2022. After opening the rice mill, it was agreed upon that the complainant shall look after the work of the market only and the applicant shall look after the work for buying, selling and manufacturing of the rice mill and accused no.2 will maintain the records of buying and selling of Rice and Paddy in the Mill and no good shall be imported or exported from the factory and without the signature/knowledge of accused no. 2 and accused No.3 would prepare profit and loss account and would also prepare the necessary tax statements for paying tax to the Government. Accused no.2 and 3 were employed in the factory by accused no 4. The accused took the complainant under false assurance and took his signature on some blank papers and upon blank cheques by saying that the complainant is partner of 60% share and his signature is required for smooth running of the mill and also obtained the password of the complainant's online bank account so that the accused no. 4 could do NEFT transaction etc. As per partnership deed, no partner should do anything against the firm or to cause damage to firm but in pursuance of their*



*conspiracy all the accused persons signed the deed and took the complainant into their trust and thereby caused financial and mental injury to complainant. The accused no. 4 also started doing business in the name of Mahalakshmi Rice Mill and by keeping the complainant in the dark, all the accused persons started running business in the said mill but after sometime when the accused persons did not give any account and the share of profit to complainant then the complainant demanded the entire record of Mahalakshmi Rice Mill from the accused persons, on which the accused persons lingered on the matter and did not give record to the complainant whereas according to partnership deed, any partner can inspect the account and record of the firm, but the accused persons to achieve their nefarious design did not handover or showed any record to the complainant and the complainant was kept away from all types of work in Mahalakshmi Rice mill. The complainant tried many times to claim his rights as per partnership deed and to see the work of Rice mill, but the said accused never provide any information to the complainant regarding the work being done inside the said rice mill. The returns or statements of Mahalakshmi Rice mill were prepared with the connivance of the said accused by keeping the complainant in the dark and same were signed by the accused no. 4 only. On the asking of accused no.4, the complainant purchased paddy till march 2023 from the market and sent the same to Mahalakshmi Rice mill and accused no. 4 assured the complainant that the rice mill was running well and they needed more goods and rice mill is not in loss. The accused no 4 has been running the firm Shiv traders Rania District Sirsa (under the name of accused No.1) for many years and accused no. 1 is sole proprietor of the same. The accused have shown that they have sold goods of Mahalakshmi Rice mill to above said firm and in this way they caused loss to Mahalakshmi rice mill and to complainant and kept sending all the goods to Shiv Traders. Total 82500 quantals of paddy and 28050 quantals of*



*rice was purchased in Mahalakshmi rice mill. The full account of which was never given/handed over to the complainant despite his demand. In September 2023, the complainant was told by the accused no. 1 that the said rice mill was running in losses and a lot of payments in respect of "sale " Mahalakshmi rice mill had not been returned. When the complainant check all the records of Mahalakshmi Rice mill, then he got stunned to find that the accused persons in collusion with each other had sold about 33793.94 quantals of goods like rice and paddy of Mahalakshmi Rice Mill to their firm Shiv traders (Accused no.1) and 3368 quantal goods were shows purchased from Shiv Traders and neither any receipt nor any bill for the sold goods was shown on the firm's account, for which only a simple receipt and bill slip is present, which shows that the goods is being sold to accused no. 1. The accused persons in connivance with each other have embezzled the amount of Rs. 12 crores, which is still in their possession. When the complainant asked the accused persons about the said amount, they said that they had to embezzled and commit fraud with him and now he cannot do any harm to them and they have filed the income tax reluns and outer returns in collusion with accused No.3 and he cannot demand the record and money from them. Thereafter, the complainant with great difficulty somehow arranged the record of Mahalakshmi Rice mill and which revealed that goods were given to Shiv traders Rania by Mahalakshmi rice mill. On inquiring the matter at his own level, the complainant came to know that Shiv Traders Rania had purchased the goods from Mahalakshmi Rice mill and in this regard amount was embezzled by issuing some fake bill and a new rice mill namely Sun Light Rice Mill Ltd. Surtiya Road Village Rori, was opened by embezzlement amount and the accused was embezzling the goods of Mahalakshmi Rice Mill by the help of Sun Light Rice mill and further embezzling the profit of complainant by showing Mahalakshmi Rice Mill in losses and also cheating with the Government by presenting the fake*



*documents. When the complainant contacted with the accused no. 3 and asked him to provide the correct record regarding the said rice mill or to get the return filed properly then the accused no. 3 clearly refused the complainant and accused no. 4 removed his mobile phone number from the Website of government and registered the mobile number of complainant as part of their conspiracy. On the basis of above complaint, the FIR as registered against the accused persons.”*

**3. Contentions:**

**On behalf of the petitioner**

Learned counsel for the petitioner contends that the only allegation against the petitioner is that he allegedly issued bogus sale bills from Panchmukhi Balaji Industries to Shiv Traders in conspiracy with Rajesh Khanna, without any actual transportation of goods as claimed which is based on speculative and self-serving oral statements and not supported by any conclusive document. He further submits that to show his bona fide, he is ready to deposit the alleged amount to the tune of Rs.53,21,180/- before the trial Court.

**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 27 days and would vehemently oppose the prayer on the ground that the petitioner has defrauded the complainant by creating fake bills amounting to Rs.53,21,180/- in respect of paddy.

**4. Analysis**

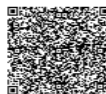
Without commenting upon the merits of the present case considering the bona fide shown by the petitioner that he is ready and willing



to pay back the amount to the tune of Rs.53,21,180/- to the complainant before the trial Court added with the facts that the present dispute revolves around contractual obligation which can be adjudicated only by way of leading evidence as the same is likely to take long time which is sufficient for this Court to infer that conclusion of trial would certainly take long time, this Court is of the view that no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131.*** 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.*

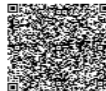
*3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a*



*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 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.

5. **Relief**

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/Chief Judicial Magistrate/Duty Magistrate, concerned subject to payment of Rs.53,21,180/- as undertaken by the petitioner today in Court.

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.

**(SANDEEP MOUDGIL)**  
**JUDGE**

**25.04.2025**

*poonam*

*Whether speaking/reasoned*      *Yes/No*

*Whether reportable*              *Yes/No*