IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.38846 of 2023
Date of Decision: 14.11.2023

Anil Kumar **-Petitioner**

Vs

State of Haryana **-Respondent**

CORAM: ***HON'BLE MR. JUSTICE KULDEEP TIWARI***

Present: Mr. Ashit Malik, Advocate for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

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KULDEEP TIWARI, J.

[1] In the instant petition, as cast under Section 439 of the Cr.P.C., the petitioner has sought the concession of his being enlarged on regular bail, in case FIR No. 35 dated 06.02.2022 under Sections 419, 420, 467, 468 and 471 of the IPC, registered at Police Station City Safidon, District Jind.

[2] The prosecution agency was set into motion on a complaint made by the Union Bank of India, Safidon, District Jind, on 06.02.2022, against one Surender and one Bhupender, both sons of Karan Singh, resident of Village Muwana, Tehsil Safidon, District Jind, for taking KCC limit from the complainant-bank by committing forgery. It was alleged in the complaint that the accused (supra) in a calculated manner, by creating forged documents of the revenue record, obtained loan of Rs.17,00,000/- under Kisan Credit Card Scheme. However, they had already obtained loan from different banks on the land in question, which was mortgaged to the complainant-bank.

[3] Learned counsel for the petitioner, to seek the relief (supra), has submitted that the allegations against the petitioner are that he was the Bank Manager of the Bank concerned at the relevant time and had disbursed the loan amount (supra). However, the petitioner has been falsely implicated in this case, as he does not have any role in the alleged forgery, rather he had only discharged his duties as a prudent person. Though four more cases have been registered against the petitioner, however, in three cases he has been granted bail by the learned Sessions Judge concerned, whereas, in one case he has been granted bail by this Court. Moreover, since challan already stands presented and charges are yet to be framed, besides the trial is also likely to take a long time to conclude, therefore, the petitioner is entitled for grant of regular bail.

[4] At this stage, Mr. Satish Kumar, Advocate, has caused his appearance on behalf of the complainant-bank. Though he has vociferously opposed the grant of regular bail to the petitioner, on the ground that he had colluded with the accused and thereby duped the bank by disbursing loan of Rs.17,00,000/- on the basis of forged documents, however, on instructions imparted to him by the complainant-bank, he has admitted the factum qua fifty percent of the principal amount being deposited by the one of the accused, namely, Surender.

[5] Learned State counsel, on instructions imparted to him by the Investigating Officer concerned, has submitted that, in the instant FIR, the challan has already been presented way back on 07.04.2023, however, charges are yet to be framed. He has further submitted that the prosecution has cited 10 witnesses.

[6] *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way

back in 1978, in its landmark judgment titled ***"State of Rajasthan V. Balchand alias Baliay", 1977 AIR 2447, 1978 SCR (1) 535.*** This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

[7] The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is "the presumption of innocence", besides the gravity of offence(s) involved.

[8] In "***Nikesh Tarachand Shah V. Union of India", (2018) 11 SCC 1,*** the Hon'ble Supreme Court has recorded the following:-

> *"14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-*
>
> > *"27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases' observations are to be*

found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)

"... the issue of bail is one of liberty, justice, public safety

and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right."

29. In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)

"There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."

30. In AMERICAN JURISPRUDENCE (2d, Volume 8, p. 806, para 39), it is stated:

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

[9] Also, in ***Siddharam Satlingappa Mhetre v. State of maharashtra, Criminal Appeal No.2271 of 2010,*** the Hon'ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual's liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

> *3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.*

[10] This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law.

[11] At this stage, this Court, without commenting on the merits of the case, deems it appropriate to extend the benefit of regular bail to the petitioner, especially considering the fact(s) that (i) the trial is at the very initial stage; (ii) the challan has already been presented; (iii) charges are yet to be framed; (iv) the case is triable by Magistrate; (v) conclusion of trial would take long time; (vi) the entire evidence is based on documents; (vii) the petitioner is behind the bars since 06.02.2023 and he has already deposited fifty percent of the borrowed amount with the complainant-bank. Moreover, considering the fact that the Bank has other alternate remedies/mechanisms to recover the loan amount from the accused persons, as also the fact that grant of bail to the petitioner will neither cause any impediment nor will curtail the right of the Bank to take such legal recourse, as it deems fit for recovery of loan amount, the present petition is allowed. The petitioner is ordered to be released on bail, on his furnishing bail bond and surety bond to the satisfaction of concerned Chief Judicial

Magistrate/trial Court/Duty Magistrate.

[12]. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

(KULDEEP TIWARI)
JUDGE

14.11.2023
Prince/Devinder

Whether speaking/reasoned Yes/No

Whether reportable Yes/No