

HIGH COURT OF HIMACHAL PRADESH**Bench : Justice Sushil Kukreja****Date of Decision: 09 April 2024**

Cr. MP (M) No. 415 of 2024 a/w Cr. MPs(M) No. 603 & 613/2024

Amit Pradeep Singh and Others. Petitioners**Versus****State of Himachal Pradesh. Respondents****Legislation and Rules:**

Sections 420, 120-B of the Indian Penal Code (IPC)

Section 5 of the Himachal Pradesh Protection of Interests of Depositors (In Financial Establishments) Act, 1999

Sections 21 & 23 of the Banning of Unregulated Deposit Schemes Act, 2019

Section 439 of the Criminal Procedure Code

Subject: Bail applications in connection with an FIR related to an economic offense involving fraudulent investment schemes and the creation of fake websites.**Headnotes:**

Bail in Economic Offence Case - Conditions - Petitions under Section 439 of the Criminal Procedure Code seeking bail in case FIR No. 120/2023 - Accused charged with offenses under IPC Sections 420, 120-B, Himachal Pradesh Protection of Interests of Depositors Act, and Banning of Unregulated Deposit Schemes Act - Allegations of embezzlement through fake websites and virtual currency schemes - Petitioners contend innocence and completion of investigation - Prosecution opposes bail on grounds of seriousness of economic offense and possibility of tampering with evidence - Court examines principles for grant of bail in economic offenses - Relies on jurisprudence emphasizing presumption of innocence until proven guilty, with bail as the rule and jail as the exception - Considers factors such as gravity of offense, severity of punishment, and likelihood of accused tampering with evidence or fleeing from justice - Noting completion of investigation and filing of chargesheet, finds no likelihood of immediate trial completion - Grants bail with stringent conditions including personal bond and sureties, appearance before court and investigating officer, prohibition on crypto currency business, property restrictions, non-interference with evidence or witnesses, and

surrender of passport - Allows prosecution to move for bail cancellation if conditions violated.

Referred Cases:

- Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 Supreme Court Cases 40
- Manoranjana Sinh alias Gupta Vs. CBI, (2017) 5 SCC 218
- Dataram Singh Vs. State of Uttar Pradesh & Another, (2018) 3 SCC 22
- Satender Kumar Antil Vs. Central Bureau of Investigation & Another, (2022) 10 SCC 51

Representing Advocates:

For the petitioner(s): Mr. Arjun Lal, Mr. Vinod Chauhan, Ms. Aanchal Singh, Mr. Kshitij Thakur, Advocate, vice Mr. Rajesh Verma, Advocate, and Mr. Rajinder Thakur, Advocates.

For the respondent: Mr. Navlesh Verma, Additional Advocate General.

Sushil Kukreja, Judge

Since all these petitions arise out of FIR No. 120/2023 dated 24.09.2023, they have been heard together and are being disposed of by this common order.

2. By way of instant petitions, filed under Section 439 of the Criminal Procedure Code, the petitioners are seeking bail in case FIR No. 120/2023, dated 24.09.2023, registered at Police Station Palampur, District Kangra, H.P., under Sections 420, 120-B of the Indian Penal Code (hereinafter referred to as "IPC"), read with Section 5 of the Himachal Pradesh Protection of Interests of Depositors (In Financial Establishments) Act, 1999 and Sections 21 & 23 of the Banning of Unregulated Deposit Schemes Act, 2019.

3. The prosecution story, as per the status report, in brief, is that on 24.09.2023, a complaint was received at Police Station Palampur, District Kangra, H.P. against accused Subhash Sharma, Hemraj, Sukhdev Thakur, Abhishek Sharma and Milan Garg, wherein, it was stated that many persons had invested their money through website www.voscrow.io on the advice of the above named accused persons. The owners of the website were accused Subhash Sharma and Milan Garg. In exchange for the investment, the virtual

currency was given to the persons on the website. However, accused Subhash Sharma, promoter Sukhdev Thakur and Abhishek Sharma had cheated the general public through websites Voscrow & Hypenext, as in the year 2019-2020, the above named persons kept on promising to double the person's invested money, which continued till the year 2021. During this period, some persons received return on the funds invested by them and many persons followed and made investments in the scheme, but after 25th December, 2021, allocation of fund/return was stopped by accused Subhash Sharma. Subsequently, he assured the persons that they would start the distribution of return soon and announced a tie up with the Hypenext Company, which was owned by accused Milan Garg. Thereafter, he started asking persons to invest in Hypenext and many persons trusted his words and invested again. During that period, some people got return on their investments, which continued till the year 2022. However, later on, accused Subhash Sharma informed that the company could not make the returns due to some technical problems and asked for some time to start the payment again. The accused persons again acknowledged the pending refund of 18 Crores and assured to activate ID's on Aglobal.IO by 08.08.2023. However, till date the persons did not receive any return on their investment in the scheme. As per the complainant, the accused persons in connivance with one another and by developing fake websites and by showing fake coins, have embezzled huge amount. After the registration of FIR the investigation commenced and during the course of investigation, petitioners were arrested on 23.10.2023 and 04.11.2023.

4. The bail applications have been filed by the petitioners on the ground that they are innocent and have been falsely implicated in the present case. Learned counsel for the petitioners contended that the investigation in the case qua the petitioners is complete and no recovery is to be effected from them. They further contended that the petitioners are in custody since 23.10.2023 & 04.11.2023 and the charge-sheet qua them has already been filed before the learned designated Court, therefore, no fruitful purpose will

be served by keeping them behind the bars for an unlimited period, as trial is not going to be completed in near future.

5. Conversely, the learned Additional Advocate General submitted that the petitioners do not deserve to be released on bail as they have been found involved in a serious economic offence of huge magnitude, so at this stage, in case they are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice.

6. I have given my considered thought to the rival contentions raised and also gone through the police file as well as the status report/chargesheet filed by the prosecution. As per the chargesheet, the petitioners are accused of economic offences of huge magnitude. The perusal of the record reveals that the investigation qua the petitioners is complete and charge sheet has been filed against them before the learned designated Court on 19.12.2023, which details out the role of the petitioners. It would be useful at this point to give a conspectus of the law and the principles for grant of bail. Extracts from some of the most relevant and topical judgments on this point are set out in the paragraphs that follow.

7. In ***Sanjay Chandra Vs. Central Bureau of Investigation***, (2012) 1 Supreme Court Cases 40, the Hon'ble Apex Court was considering the bail application where the accused was charged with the economic offences of huge magnitude and it was held that the object of bail is to secure the appearance of the accused at the trial and that every man is deemed to be innocent until duly tried and duly found guilty.

Relevant portion of the aforesaid judgment reads as under:-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held

in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. 23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

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39. *Coming back to the facts of the present case, both the Courts have refused the request for grant of bail on two grounds :- The primary ground is that offence alleged against the accused persons is very serious involving deep rooted planning in which, huge financial loss is caused to the State exchequer ; the secondary ground is that the possibility of the accused persons tempering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.*

40. *The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.*

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46. *We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI."*

8. In **Manoranjana Sinh alias Gupta Vs. CBI**, (2017) 5 SCC 218, the Hon'ble Apex Court reiterated the decision rendered in Sanjay Chandra's case (supra) by holding as under:-

"16. This Court in Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 SCC 40, also involving an economic offence of formidable

magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted.”

9. Similar reiteration of law can be found in ***Dataram Singh Vs. State of Uttar Pradesh & Another***, (2018) 3 SCC 22, wherein it has been held that a person is believed to be innocent until found guilty and the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home is an exception. Relevant portion of the aforesaid judgment reads as under:-

“1. 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.

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*4. 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*.”*

10. In ***Satender Kumar Antil Vs. Central Bureau of Investigation & Another***, (2022) 10 SCC 51, it has been held as under:-

“12. The principle that bail is the rule and jail is the exception has been well recognized through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India.

.....
14. *Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the Court. Thus, it is for that agency to satisfy the Court that the arrest made was warranted and enlargement on bail is to be denied.*

15. *Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty.*

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90. *What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:-*

91. *P. Chidambaram v. Directorate of Enforcement:*

23. *Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.”*

11. A perusal of the abovementioned judgments indicates that even if the allegation is one of the grave economic offence, it is not a rule that the bail should be denied in every case. The object of bail is neither punitive nor preventive, but to secure the presence of the accused at the trial. The person who has not been convicted should be held in custody pending trial only to ensure his attendance at trial; and to ensure that the evidence is not tampered with and the witnesses are not threatened. If there is no apprehension of interference in administration of justice in a criminal trial by an accused then, he should not be deprived of his liberty. Only a vague belief that he will tamper with evidence and flee from justice cannot be a ground to deprive a person of his liberty.

12. In the case on hand, as observed earlier, the petitioners are in custody since 23.10.2023 and 04.11.2023. This court is conscious of the fact that the petitioners are charged with economic offence of huge magnitude. However, the investigating agency has completed investigation qua them and chargesheet has already been filed against them. As per the status report, after investigation, the charge sheet against accused Hemraj, Sukhdev and Abhishek was put in the designated Court on 29.11.2023 and supplementary charge sheet against other 16 accused persons including the petitioners was put in Court on 19.12.2023, whereas, the investigation against the other accused/suspects in top 100 IDs is being prioritized and other suspects are being associated in the investigation of the case and the evidence is being collected. The trial against the petitioners is still to commence, as the charges have not been framed, as such, there is no likelihood of the completion of trial in near future, hence, no fruitful purpose will be served by keeping the petitioners behind the bars for an unlimited period. The evidence is mainly documentary in nature and all the relevant documents are within the custody of the prosecution, therefore, there is no likelihood of tampering of evidence by the petitioners. The prosecution has failed to produce any material on record to suggest that the petitioners will abscond and flee from justice, if

enlarged on bail. The petitioners have deep roots in the society and they are permanent residents of the State of Himachal Pradesh.

13. Hence, after going through the material available on record and considering the overall facts and circumstances of the case, this Court finds that the present is a fit case where judicial discretion to admit the petitioners on bail is required to be exercised in their favour. The apprehension expressed by the investigating agency can be safeguarded by imposing certain stringent conditions that will meet the ends of justice. Accordingly, all the bail applications are allowed and it is ordered that the petitioners, who have been arrested by the police, in case FIR No. 120/2023, dated 24.09.2023, registered at Police Station Palampur, District Kangra, H.P. under Sections 420, 120- B of IPC, read with Section 5 of the Himachal Pradesh Protection of Interests of Depositors (in Financial Establishments) Act, 1999 and Sections 21 & 23 of the Banning of Unregulated Deposit Schemes Act, 2019. shall be forthwith released on bail, subject to their furnishing personal bond to the tune of Rs. 5,00,000/- (Rupees five lacs) each, with two sureties (each) in the like amount, to the satisfaction of learned Trial Court. This bail order is subject, however, to the following conditions:-

- “(i) that the petitioners will appear before the Court and the Investigating Officer whenever required ;*
- (ii) that they will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing any facts to the Court or the police;*
- (iii) that they will not indulge in the business of sale/purchase of crypto currency;*
- (iv) that they will not transfer, alienate or encumber their movable and immovable property, if any.*
- (v) that they will not tamper with the prosecution evidence nor they will try to win over the Prosecution witnesses or terrorise them in any manner;*
- (vi) that they will not deliberately and intentionally act in a manner which may tend to delay the investigation or the trial of the case;*
- (vii) that they will not leave India without prior permission of the Court and their passports shall be deposited with the trial Court, if already not seized by the police”*

14. Needless to say that the Investigating agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions is violated by the petitioners.
15. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.
16. The Registry is directed to forward a soft copy of the bail order to the Superintendent, Sub-Jail Kaithu, Shimla, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.
17. In case, the petitioners are not released within a period of seven days from the date of grant of bail, the Superintendent, Sub-Jail Kaithu, Shimla is directed to inform this fact to the Secretary, DLSA, Shimla. The Superintendent, Sub-Jail Kaithu, Shimla is further directed that if the petitioners fail to furnish the bail bonds, as per the order passed by this Court, within a period of one month from today, the said fact be submitted to this Court.

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