HIGH COURT OF PUNJAB AND HARYANA

Bench: Justice Pankaj Jain

Date of Decision: 10th May 2024

Case No.: CRM-M-22107-2024

APPELLANT(S): Mahesh Kumar @ Mahesh Bansal .....Petitioner

VERSUS

RESPONDENT(S): State of Haryana .....Respondent

Legislation:

Sections 406, 420, 419, 465, 467, 468, 471, 409, and 120-B of the Indian Penal Code (IPC)

Sections 37 and 38 of the Haryana VAT Act

Subject: Criminal miscellaneous petition under Section 439 Cr.P.C. for grant of regular bail in a case involving charges of forgery, cheating, and conspiracy, with specific reference to the applicability of the Haryana VAT Act as a complete code excluding the jurisdiction of IPC offenses.

Headnotes:

Bail in Economic Offenses – The court evaluated the petition for regular bail considering the principle that bail is the rule and jail the exception. It acknowledged the Supreme Court's stance that while the gravity of economic offenses warrants sensitivity, it does not justify an automatic denial of bail. The court emphasized the need to balance the liberty of the individual against the interests of justice and the state's position.

Triple Test for Bail – The court applied the triple test: (i) whether the accused is a flight risk, (ii) whether the accused will tamper with evidence if granted bail, and (iii) whether the accused could influence witnesses if granted bail. The court found no substantial risk under these criteria warranting continued detention.

Comparative Analysis – The petitioner sought parity with a co-accused who was granted bail earlier. The court recognized that denying bail to one while

granting it to another under similar circumstances would be unjust. Therefore, it allowed bail for the petitioner on parity grounds.

Legislative Framework – The petitioner's counsel argued that the offenses related to tax evasion under the Haryana VAT Act, a self-contained code excluding IPC provisions. The court noted that such arguments, though relevant, do not preclude the grant of bail, particularly when investigation and charge-sheets have been filed, reducing the risk of tampering with evidence.

Decision: Petition allowed. The petitioner is granted regular bail on furnishing bail bonds/surety to the satisfaction of the trial court. The court imposed conditions including the surrender of the passport, maintaining contact details, and refraining from altering any documents or business structures under investigation.

Referred Cases:

- Union of India v. Ashok Kumar Sharma & Ors., 2020 AIR (SC) 5274
- State through CBI v. Amaramani Tripathi, 2005 (8) SCC 21
- Satender Kumar Antil v. CBI, 2022 AIR (SC) 3386
- Sanjay Chandra v. CBI, (2012) 1 SCC 40
- Dipak Shubhashchandra Mehta v. CBI, 2013 (3) RCR (Criminal) 854

Representing Advocates:

For petitioner: Mr. Abhinav Gupta, Advocate

For respondent: Mr. Ashok Kumar Sehrawat, DAG, Haryana

ORDER

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C.

for grant of regular bail to the petitioner in case bearing FIR No.651 dated 24.10.2020, registered for the offences punishable under Sections 406, 420, 419, 465, 467, 468 and 471 of IPC (Sections 409 and 120-B of IPC added later on) at Police Station City Sirsa, District Sirsa.

2. Counsel for the petitioner submits that the prime accused Amit Bansal stands admitted to bailvide order dated 08.02.2024, observing as under:-

"xx xx xx

3. Counsel for the petitioner(s) submits that the matters relate to evasion of tax under Haryana VATAct and in light of Section 37 read with Section 38, petitioners ought not have been booked for offences punishable under IPC.

4. The legislature in its own wisdom has excluded the jurisdiction of police authorities andprovisions of Indian Penal Code. It is evident from the fact that the officer though has been provided with power under 1973 Code, but there is no power of custodial interrogation. The legislature has provided specific penal provisions in VAT Act, which is a complete code in itself. Officers have been clothed only with the power as provided under Code of 1973. Thus, jurisdiction of police stands excluded. Reliance is being placed upon Union of India vs. Ashok Kumar Sharma & Ors. 2020 AIR (Supreme Court) 5274.

5. The parameters to be considered while deciding the prayer for bail are well laid down by ApexCourt in the case of 'State through CBI vs. Amaramani Tripathi, reported as 2005(8) SCC 21', holding that:

"xx xx xx It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see Prahlad Singh Bhati vs. NCT, Delhi 2001 (4) SCC 280 and Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

6. Coordinate Bench in Maninder Sharma's case (supra) laid down the following tripode test whiledealing with economic offences:-

2 "xx xx xx Further, while considering the grant of bail, the triple/tripod test would also be a relevant consideration. The three factors as set out in the said test are:- (i) Whether the accused is a flight risk; (ii) Whether the accused will tamper with the evidence, if granted bail & (iii) whether the accused could influence the witnesses, if granted bail.

8. Therefore, broadly speaking (subject to any statutory restrictions contained in

Special Acts) , in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant."

7. There is no denial to the fact that the economic offences constitute a separate class of their own,but trite it is that presumption of innocence is one of the bedrocks on which the criminal jurisprudence rests. Time and again, Apex Court has reiterated the need to integrate the right of investigating agencies to have effective interrogation of the accused with the right of liberty of the accused. While dealing extensively with the rights of the accused in the economic offences, Apex Court in the case of Satender Kumar Antil vs. Central Bureau of Investigation and another, reported as 2022 AIR (Supreme Court) 3386 held as under :

"xx xx xx

66. 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 3 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 judgements, will govern the field:-

Precedents P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791:

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.

4 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.

Sanjay Chandra v. CBI (2012) 1 SCC 40:

"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 the 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 of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment 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.

5 x xxx xxx

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 jeopardise 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 ally the apprehension expressed by CBI."

ROLE OF THE COURT

67. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factorweighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

68. Criminal courts in general with the trial court in particular are the guardian angels of liberty.Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest. This Court in Arnab Manoranjan Goswami v. State of Maharashtra, (2021) 2 SCC 427, has observed that:

"67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted 6 legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of CrPC "or prevent abuse of the process of any court or otherwise to secure the ends of justice". Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies.

The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one--and a significant

--end of the spectrum. The other end of the spectrum is equally important : the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post- Independence, the recognition by Parliament [Section 482 CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a 7 target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum--the district judiciary, the High Courts and the Supreme Court-- to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum--the need to ensure the proper enforcement of criminal law

on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting." (emphasis supplied)

8. Similarly, in the case of Suresh Kalmadi vs. CBI , reported as 2012(5) RCR (Cri.) 556 the Apex Court held:-

"xx xx xx However, the evidence to prove accusations is primarily documentary in nature besides a few material witnesses. As held in Sanjay Chandra (supra) if seriousness of the offence on the basis of punishment provided is the only criteria, the Courts would not be balancing the Constitutional Rights but rather recalibrating the scales of justice.

9. In Anil Kumar versus State of Punjab 8 of 14 Neutral CitationNo:=2024:PHHC:065634 2013(3) RCR (Criminal) 854 it was held:-

"xx xx xx

9. The latest judgment cited by the learned counsel for the petitioners is of the Hon'ble Supreme Court in Dipak Shubhashchandra Mehta (supra) wherein the entire law has been discussed. The Hon'ble Supreme Court in para No.18 in Dipak Shubhashchandra Mehta's case (supra) has held as under: -

"18. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness

or apprehension of threat to the complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted. Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.03.2010, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. As posed in the 9 Sanjay Chandra's case (supra) we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above."

Further, the Hon'ble Supreme Court in the case of Sanjay Chandra (supra) has held as under:- "

15. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice."

The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual

and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. This Court, in Kalyan Chandra Sarkar Vs. Rajesh Ranjan- (2005) 2 SCC 42, observed that 10 "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of nonbailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."

10. In Sanjay Chandra's case (supra) also the Hon'ble Supreme Court has considered the entire lawon the subject.

11. I am conscious of the fact that serious allegations of connivance and causing financial loss to theState exchequer have been levelled against the petitioners. There are also allegations of dishonesty, forgery, cheating and charges under various Sections of IPC and Prevention of Corruption Act have been levelled. However, if the petitioners are allowed to be kept in judicial custody for indefinite period then Article 21 of the Constitution is violated. It is the fundamental right of every person in judicial custody for speedy trial. In the facts of the present case, it is to be seen whether keeping the petitioners in custody is justified specially when some of the persons who have been nominated during investigation are yet to be arrested and challan against them is to be presented on their joining investigation.

12. Second argument is regarding tampering with the evidence. I have considered this contentionalso. The entire case is based on the documentary evidence i.e. forged vouchers, bills and thereafter the payment to various contractors and others in connivance with the 11

Government officials. This is not a case based on the oral testimony of individuals. No doubt the allegations against the petitioners are serious in terms of the alleged huge loss caused to the State exchequer, that by itself should not deter this Court from enlarging the accused on bail specially when they are already behind bars for about seven or more months. I do not see any good reason to continue the judicial custody of the petitioners that too after completion of investigation and submission of chargesheets/supplementary charge- sheets. The loss to the State exchequer have been levelled against the petitioners. There are also allegations of dishonesty, forgery, cheating and charges under various Sections of IPC and Prevention of Corruption Act have been levelled. However, if the petitioners are allowed to be kept in judicial custody for indefinite period then Article 21 of the Constitution is violated. It is the fundamental right of every person in judicial custody for speedy trial. In the facts of the present case, it is to be seen whether keeping the petitioners in custody is justified specially when some of the persons who have been nominated during investigation are yet to be arrested and challan against them is to be presented on their joining investigation.

13. In view of this, I am of the view that petitioners are entitled to grant of bail pending trial onstringent conditions in order to allay the apprehension of the investigating agency. It is not necessary to canvass and go into the details of various other issues canvassed by learned counsel for the parties and the cases relied upon by learned counsel for the petitioners in support of their contentions. I have not expressed any opinion on the merit of the case."

10. Investigation(s) stand concluded and challan stand presented in all the cases. Proceedings standstayed by a Coordinate Bench of this Court in quashing petition i.e. CRM-M-38978-2023 in FIR 12 No.544 dated 29.07.2016, registered for offences punishable under Sections 406, 419, 420, 465, 467, 468 and 471 of IPC (Sections 409 and 120-B of IPC added later on) at Police Station Police Station Sirsa City, District Sirsa.

11. Counsel for the State is not in a position to dispute the aforesaid fact.

12. Keeping in view the aforesaid facts, without commenting on the merits of the case, theincarceration suffered by the petitioners and the fact that investigation already stands concluded and in view of dictum of law laid down in Satender Kumar Antil's case (supra), the present petitions are

allowed. The petitioners are ordered to be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

13. Needless to say the Trial Court shall be at liberty to impose any other condition in accordancewith law. Surrender of passport by the petitioners shall be a pre-condition for grant of bail. Apart from that the petitioners shall also file an undertaking before the Trial Court to the effect that he shall not change/alter/modify any documents/contact addresses/ contact numbers and the formation of the companies/firms which are under investigation and are owned by the petitioners. In case the petitioners change their mobile numbers, they shall inform the agency of such change.

14. Needless to say nothing recorded herein shall be construed to be an expression of an opinion onthe merits of the case.

15. A photocopy of this order be placed on the files of other connected cases."

3. Counsel further submits that even the proceedings under the FIR stand stayed for the reason thatVAT Act being a complete code in itself, FIRs ought not have been registered for offences punishable under the Penal Code. Further submits that case of the petitioner is even better than Amit Bansal.

4. Counsel for the State however submits that the petitioner cannot claim that he is at better footingthough, at the most he can claim parity.

5. Having heard counsel for the parties and keeping in view the observations made in order dated08.02.2024 and the admitted position by the State counsel that the petitioner shall be at par with Amit Bansal, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

6. Needless to say nothing recorded herein shall be construed to be an expression of an opinion onthe merits of the case.