

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Date of decision: 15.07.2022
CRM-M-11274-2021(O&M)

SUNIL KUMAR

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CRM-M-16234-2021 (O&M)

VAKIL CHAND ALIAS VICKY

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. S.K. Garg Nirwana, Sr. Advocate with
Mr. Amit Sharma and Mr. Vishal Garg Narwana, Advocates
for the petitioner in CRM-M-11274-2021.

Ms. Monita Mehta, Advocate
for the petitioner in CRM-M-16234-2021.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

This common order has been passed in the above-mentioned criminal miscellaneous petitions as both the petitions arise out of the same FIR.

2. The instant petitions have been filed under Section 439 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') for grant of regular bail to the petitioners in case bearing FIR No.45 dated 06.03.2019 under Sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (hereinafter

referred to as 'IPC') registered at Police Station Adampur, District Hisar.

3. The facts of the case are that a firm under the name and style of M/s Aggarwal Cotton Industries, Adampur, District Hisar was registered under GST Act, 2017 on date 28.9.2017 having GST No.GSITIN 06BKYP2378E1ZY and the abovesaid firm is a proprietorship firm and the proprietor has been shown as Sh. Vakil Chand, resident of Sirsa (petitioner in CRM-M-16234-2021) on GST Portal with the mobile number, Aadhar Card and bank details. During the course of verification of the said firm at the given address, no such firm was found existing and on enquiry it was found that the business place of the firm is New Kapas Mandi Adampur and the dealers found present at the spot of New Kapas Mandi Adampur stated that no such firm is working over there for the last two years and they do not know about the proprietor of the firm i.e. Vakil Chand. On enquiry from Market Committee, Adampur, the Secretary-cum-E.O. of Market Committee, replied in writing that M/s Aggarwal Cotton Industries, Adampur was not registered in the month of November, 2017 in their office. The tax payer Vakil Chand had shown a rent agreement with one Sh. Deepak Kumar s/o Sh. Roshan Lal, r/o New Kapas Mandi, Adampur during registration of the FIR. As per report of Secretary, Market Committee, Adampur, no shop is situated in New Kapas Mandi, Adampur in the name of Sh. Deepak Kumar. As per report submitted by the tax payer i.e. Vakil Chand the total outward supply upto April, 2018 is Rs. 1,91,99,58,260/- and he has claimed ITC worth Rs. 9,60,41,488/-. The tax payer was found involved in evasion of tax by way of getting registration under GST Act by means of wilful mis-statement and suppression of fact in the name and style of M/s Aggarwal Cotton Industries in the Kapas Mandi, Adampur. The tax payer had

been found to be fraudulently involved in wrong availment and utilization of ITC for disposal of tax liability without actual payment of tax resulting into loss of revenue to the State exchequer.

4. Learned counsel for the petitioners contend that in so far as Sunil Kumar (petitioner in CRM-M-11274-2021) is concerned, he is stated to be a dealer who had met various buyers and had convinced them to secure supply of cotton bales from the firm namely M/s Aggarwal Cotton Industries Adampur and the co-accused Vakil Chand (petitioner in CRM-M-16234-2021) is alleged to be the proprietor of the said firm. It is submitted that the name of the petitioner Sunil Kumar was nominated on the disclosure statement of co-accused Vakil Chand who was revealed to the officials of the Excise Department to be evading tax and to have availed input tax credit to the tune of Rs.9.66 crores. A reference is made to the statement of witnesses recorded by the investigating agency under Section 161 CrPC to contend that the alleged bogus bills in question are stated to have been issued in favour of the said persons who have already claimed to have deposited the tax along with interest due to the Government and as such, there is no loss to the public exchequer. He further contends that the trial is a Magisterial trial and the petitioner Vakil Chand is in custody since 07.12.2020 while petitioner Sunil Kumar is in custody since 18.12.2020. Both the petitioners do not have any other criminal case registered against them and have already undergone more than 1½ years of actual custody. Besides, the investigation in the case is already complete and the trial has commenced and out of 17 witnesses so cited by the prosecuting agency only 02 witnesses have been examined so far. It is contended that the conclusion of the trial shall take long and continued custodial incarceration of the

petitioners is not likely to advance any interest of justice. It is pointed out that even if the element of tax evasion is taken into consideration, the maximum sentence prescribed under Section 132 of the Central Goods and Services Tax Act, 2017 (as was applicable then) was upto 05 years with fine and that against the alleged commission of offence punishable under Section 132 of the Central Goods and Service Tax Act, 2017, the offence under the Indian Penal Code, 1860 ought not to have been attracted.

5. Learned State counsel points out that the petitioners had connived with each other and had shown transactions with a total turn over of Rs.191 crores approximately and had availed input tax credit of Rs.9.60 crores and thus caused loss to the State exchequer. It was, however, not disputed that the petitioners are in custody for more than 1½ years and that only 02 witnesses have been examined so far. The statement of the witnesses recorded under Section 161 CrPC and adverted to in the Court are not disputed. As per the said statement, the input tax credit which was wrongfully retained by the firm already stands paid by the purchasers.

6. I have heard learned counsel for the parties and have perused the material on record.

7. Insofar as the aspect as to whether the general penal provision of the Indian Penal Code, 1860 would be applicable in the present case or the special law under Section 132 of the Central Goods and Services Tax Act 2017 would be applicable is an issue to be decided by the trial Court. Undisputedly, no proceedings under the Central Goods and Services Act, 2017 had been instituted which may give rise to an inference that there is an actual loss to the exchequer and even the witnesses of the State record their statement to the said effect. There

is no rebuttal to the said statement at this stage and the Court has to assume that the State exchequer has been indemnified for the pecuniary loss.

8. Furthermore, also into considering the fact that the present case being a Magisterial trial wherein the petitioners have already undergone substantive sentence of 1½ years since their arrest in the month of December 2020 and that only 02 witnesses have been examined so far coupled with the fact that the petitioners do not suffer from any criminal antecedents, I deem it appropriate to enlarge the petitioners on bail. No apprehension has been expressed by the State about the petitioners absconding from trial or tampering with the prosecution evidence. The Hon'ble Supreme Court has observed in the matter of **Satender Kumar Antil Vs Central Bureau of Investigation and another** as under:-

“DEFINITION OF BAIL

8. *The term “bail” has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the Court or by the police or by the Investigating Agency.*

9. *It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word “bail” has been defined in the Black’s Law Dictionary, 9th Edn., pg. 160 as: -*

“A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time.”

10. *Wharton’s Law Lexicon, 14th Edn., pg. 105 defines bail as:-*

“to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at

a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc., the legal power to deliver him."

BAIL IS THE RULE

*11. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This court in **Nikesh Tarachand Shah v. Union of India**, (2018) 11 SCC 1, held that:*

"19. In Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465], the purpose of granting bail is set out with great felicity as follows: (SCC pp. 586-88, paras 27-30)

"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 Nath Chakravarti, In re [Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318 : AIR 1924 Cal 476 : 1924 Cri LJ 732] , AIR pp. 479-80 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 [K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60 : AIR 1931 All 504 : 1932 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. H.L. Hutchinson [Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14 : AIR 1931 All 356 : 1931 Cri LJ 1271] , AIR p. 358 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. State* [*Gudikanti Narasimhulu v. State*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1) ‘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 sensitised 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 (UT of Delhi)* [*Gurcharan Singh v. State (UT of Delhi)*, (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)

‘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* (2nd, Vol. 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."

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24. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248]."

12.*Further this Court in **Sanjay Chandra v. CBI** (2012) 1 SCC 40, has observed that:*

"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 is 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 unconvicted 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 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 unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”*

PRESUMPTION OF INNOCENCE

13. *Innocence of a person accused of an offense 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.*

14. 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.

15. Both in Australia and Canada, a prima facie right to a reasonable bail is recognized based on the gravity of offence. In the United States, it is a common practice for bail to be a cash deposit. In the United Kingdom, bail is more likely to consist of a set of restrictions.

*16. The Supreme Court of Canada in **Corey Lee James Myers v. Her Majesty the Queen**, 2019 SCC 18, has held that bail has to be considered on acceptable legal parameters. It thus confers adequate discretion on the Court to consider the enlargement on bail of which unreasonable delay is one of the grounds. **Her Majesty the Queen v. Kevin Antic and Ors.**, 2017 SCC 27:*

“The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system. It entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of accused persons. This right has two aspects: a person charged with an offence has the right not to be denied bail without just cause and the right to reasonable bail. Under the first aspect, a provision may not deny bail without “just cause” there is just cause to deny bail only if the denial occurs in a narrow set of circumstances, and the denial is necessary to promote the proper functioning of the bail system and is not undertaken for any purpose extraneous to that system. The second aspect, the right to

reasonable bail, relates to the terms of bail, including the quantum of any monetary component and other restrictions that are imposed on the accused for the release period. It protects accused persons from conditions and forms of release that are unreasonable. While a bail hearing is an expedited procedure, the bail provisions are federal law and must be applied consistently and fairly in all provinces and territories. A central part of the Canadian law of bail consists of the ladder principle and the authorized forms of release, which are found in s. 515(1) to (3) of the Criminal Code. Save for exceptions, an unconditional release on an undertaking is the default position when granting release. Alternative forms of release are to be imposed in accordance with the ladder principle, which must be adhered to strictly: release is favoured at the earliest reasonable opportunity and on the least onerous grounds. If the Crown proposes an alternate form of release, it must show why this form is necessary for a more restrictive form of release to be imposed. Each rung of the ladder must be considered individually and must be rejected before moving to a more restrictive form of release. Where the parties disagree on the form of release, it is an error of law for a judge to order a more restrictive form without justifying the decision to reject the less onerous forms. A recognizance with sureties is one of the most onerous forms of release, and should not be imposed unless all the less onerous forms have been considered and rejected as inappropriate. It is not necessary to impose cash bail on accused persons if they or their sureties have reasonably recoverable assets and are able to pledge those assets to the satisfaction of

the court. A recognizance is functionally equivalent to cash bail and has the same coercive effect. Cash bail should be relied on only in exceptional circumstances in which release on a recognizance with sureties is unavailable. When cash bail is ordered, the amount must not be set so high that it effectively amounts to a detention order, which means that the amount should be no higher than necessary to satisfy the concern that would otherwise warrant detention and proportionate to the means of the accused and the circumstances of the case. The judge is under a positive obligation to inquire into the ability of the accused to pay. Terms of release under s. 515(4) should only be imposed to the extent that they are necessary to address concerns related to the statutory criteria for detention and to ensure that the accused is released. They must not be imposed to change an accused person's behaviour or to punish an accused person. Where a bail review is requested, courts must follow the bail review process set out in R. v. St-Cloud, 2015 SCC 27, [2015] 2 S.C.R. 328."

17. We may only state that notwithstanding the special provisions in many of the countries world-over governing the consideration for enlargement on bail, courts have always interpreted them on the accepted principle of presumption of innocence and held in favour of the accused.

18. The position in India is no different. It has been the consistent stand of the courts, including this Court, that presumption of innocence, being a facet of Article 21, shall inure to the benefit of the accused. Resultantly burden is placed on the prosecution to prove the charges to the court of law. The weightage of the evidence has to be assessed on the principle of beyond reasonable doubt."

9. There is no compelling circumstance as would call for continued custodial detention of an accused in a Magisterial trial when they have already undergone 1½ years of actual sentence and the trial is still at the nascent stage and is likely to take long to conclude. Magnitude of a crime and its social impact are even though essential aspects to be kept in mind while constituting a bail petition, however, the same can not remain the sole ground for prolonging detention for indefinite period of time. Court needs to strike a fine balance while considering an application of bail since the adopted criminal jurisprudence in the country hinges on presumption of innocence.

10. The power to grant bail is not to be deployed as a mechanism for imposing sentence even before a guilt is yet to be proved and established.

11. Accordingly, the present petitions are allowed and the petitioners are admitted to regular bail subject to their furnishing heavy bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

12. It is made clear that the petitioners shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

13. The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

July 15, 2022

S.Sharma(syr)

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*