

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 20th January, 2015

+ **Bail Appln. No.2102/2014**

SARWAN SINGH Petitioner
Through Mr.K.K.Manan, Adv. with Mr.Nipun
Bhardwaj & Mr.Ankush Narang,
Adv.

versus

STATE Respondent
Through Mr.M.N.Dudeja, APP for the State.
Mr.Manoj Chaudhary, Adv. for the
complainant.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the present petition under Section 439 Cr.P.C. for grant of bail in case FIR No.195/2013, under Sections 419/420/467/468/471/120-B IPC, P.S. Economic Offences Wing. Notice was issued to the State on 22nd September, 2014. The status report has been filed where the case of the prosecution has been narrated on the basis of the FIR filed by the complainant. The relevant extracts of the complaint read as under:-

“The complainant Sh. Kushal K. Rana has alleged that (1) Makhan Singh S/o Late Sh. Surjeet Singh (2) Smt. Mohinder Kaur W/o Late Sh. Sohan Singh (3) Swaran Singh S/o Late Sardar Karnail Singh (4) Ravinder Sharma and (5) Gurmeet Singh have cheated him for

4.25 crore with dishonest intention on the pretext of sale/purchase of property (Farm House) No.5 Mulberry Drive, DLF, Chattarpur, New Delhi. In that the present petitioner/accused person along with his other associates approached the complainant with the accused Smt. Mohinder Kaur and she was introduced to him as the owner of PIQ. It was stated to the complainant that the husband of Smt. Mohinder Kaur was killed in 1984 riots in Delhi. Thereafter she left Delhi and went to her native place Distt. Firozpur, Punjab, leaving behind her aforesaid property. The present petitioner/accused stated to the complainant that he is the elder brother of Smt. Mohinder Kaur and takes care of her. Mr. Makhan Singh presented himself as attorney of Smt. Mohinder Kaur in respect to the aforesaid property. Other accused persons namely Gurmeet Singh and Ravinder Sharma identified Smt. Mohinder Kaur to the complainant. Later, complainant revealed that the aforesaid lady has impersonated as the actual owner using the same name and till date he was duped of Rs.4.25 crore by the aforesaid accused persons in the way of payment of advance money for aforesaid deal. All the money taken from the complainant was distributed amongst themselves. It is important to mention that accused Baldev Singh, who is the son of the present accused/applicant, was accompanying his father at all the time during the aforesaid deal. The actual Mohinder Kaur has been traced and her statement has been recorded.

On 15th February, 2014 accused Makhan Singh was arrested in above case. During interrogation he disclosed that a total sum of Rs.85 lac was paid by him to the petitioner/accused Sarwan Singh and his sister Smt. Mohinder Kaur in this deal.

On 5th April, 2014 accused Balbir Kaur @ Mohinder Kaur W/o Sh. Jagtar Singh was arrested at village Jodh Singh Wala, PS Valtova, District Tarantaran, Punjab. During interrogation she stated that 6-7 years ago she met the present petitioner Sarwan Singh and his son Baldev Singh at Village Attari and Sarwan Singh came close to her. Thereafter Sarwan Singh and his son Baldev Singh persuaded her to agree to impersonate as Mohinder Kaur W/o Late Sohan Singh in lieu of payment of Rs.10 lac and arranged the Ration Card, Voter Card and Passport with names mentioned as Mohinder Kaur W/o Late Sohan Singh, affixed with the photograph of Smt. Balbir Kaur and entrusted her to present herself as the widow of Late Sohan Singh who died in Delhi in 1984 riots. On the basis of the identity document a bank account was opened at State Bank of Patiala, Ferozpur Branch. On the basis of missing report of the property documents lodged by Smt. Balbir Kaur @ Mohinder Kaur at Police Post Mohrewala, the certified copy of the PIQ was got issued at Delhi and the GPA of PIQ was executed in favour of Makhan Singh. Thereafter, on the instruction of Sarwan Singh and his son Baldev Singh she again executed various documents related to the PIQ in favour of the complainant. All her forged identity documents including the Bank Pass Book and signed blank cheques are still with Baldev Singh.

During further investigation, one Sh. Dalvir Singh, S/o Sh. Harbhajan Singh, R/o LIG 655, Housing Board Colony, Firozpur City, who is introducer in the account opening form of accused Mohinder Kaur @ Balbir Kaur was interrogated. He stated that Mohinder Kaur was introduced to him by Sarwan Singh as his sister, as such

he signed as introducer in the account opening form of accused Mohinder Kaur @ Balbir Kaur.”

2. Mr. Manan, learned counsel for the petitioner submits that no incriminating material has been recovered, either from the possession of the petitioner or at his instance. As per the FIR, no amount was paid by the complainant to the petitioner. The investigation against the petitioner is already complete. The Investigating Agency has filed the charge-sheet and the petitioner is now no more required for any investigation. He further says that the petitioner is merely a witness to the documents. The main transaction was between the complainant and one Makhan Singh and Smt. Mohinder Kaur. The petitioner is in judicial custody since 6th March, 2014 in this case. The petitioner is aged about 80 years and he requires medical assistance due to old age. He undertakes to abide by any condition if imposed by this Court while granting the bail. He has no previous involvement in any of the matter. There is no chance of his absconding or tampering with the prosecution evidence.

3. On the other hand, learned APP for the State assisted by the learned counsel for the complainant states that the petitioner is the central character of the story who introduced the other accused to the complainant to whom the complainant has paid the amount. The case against the petitioner is of serious nature. Thus, he should not be granted bail in the matter. He further submits that the petitioner's son Baldev Singh is absconding, though the main accused persons are in the custody.

4. It appears from the FIR as well as the status report filed by the State that the petitioner was simply a witness to the documents. The details of the documents are mentioned in the status report. His signatures have already been taken by the Investigating Agency, which have been sent to the FSL for examination. The investigation against the petitioner has already been completed.

5. The Supreme Court in the case of **Sanjay Chandra v. Central Bureau of Investigation**, (2012) 1 Supreme Court Cases 40 in paras 21, 22, 23, 24, 40, 45, 46 after recording the facts and law has held 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 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.

24. In the instant case, 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 have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the 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 Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather “recalibrating the scales of justice”.

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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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45. In *Bihar Fodder Scam (Laloo Prasad v. State of Jharkhand, (2002) 9 SCC 372)* this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pretrial prisoners would not serve any purpose.

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 allay the apprehension expressed by CBI.”

6. Considering the overall facts and circumstances of the case and in view of the above discussion, without expressing any opinion on merits, I am inclined to release the petitioner on bail. Thus, the petitioner be released on bail, subject to his furnishing a personal bond for the sum of Rs.50,000/- with two sureties each of the like amount to the satisfaction of the learned Trial Court and further subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any threat to any witness(es) and tamper with evidence and shall remain present before Court on the dates fixed and shall take prior permission of the Court in case of unavoidable and unseen circumstances.
- (ii) He would not dispute his identity as an accused.
- (iii) He shall surrender his passport before the learned Trial Court if he has the same, and shall file his affidavit containing his latest address and all telephone numbers and undertake to inform the Court in case of change of his residence and phone numbers.

7. Liberty is granted to the prosecution to make an application for cancellation of bail in case of violation of any condition by the petitioner.

8. The present application is disposed of.

(MANMOHAN SINGH)
JUDGE

JANUARY 20, 2015