

**In the Court of Dharminder Paul Singla, Addl. Sessions Judge, Jalandhar
[UID No.PB0083]**

BA/1899/2024

Presented on : 20-04-2024

Registered on : 20-04-2024

Decided on : 29-04-2024

CNR No.PBJL010059062024

Swaran Kumar alias Shravan Kumar aged about 54 years son of Nathu Singh resident of H.No. 117, Askaripur, PS Nurpur, Tehsil Chandpur, District Bijnour, UP at present resident of Bara Salam, PS Mehatpur, Tehsil Nakodar, District Jalandhar.

.....Accused/applicant

Versus

State of Punjab.

.....Respondent.

FIR No. 103 dated 17.08.2018

U/Sec. 406/420 of IPC and Section 13 of Punjab
Travels and Professional (Regulation) Act, 2014.

PS Mehatpur, District Jalandhar.

Bail Application under Section 439 Cr.P.C.

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Present: Sh. Puneet Sareen, Advocate, for Applicant/ accused.  
Sh. Gurpreet Singh, Addl. Public Prosecutor for the State

**ORDER**

1. This order of mine shall dispose of an application for regular bail under Section 439 Cr.P.C. moved by accused/applicant Swaran Kumar in case FIR No. 103 dated 17.08.2018 for offence under Sections 406, 420 of IPC and Section 13 of Punjab Travels and Professional (Regulation) Act, PS Mehatpur, District Jalandhar.

2. Relevant facts for disposal of bail application are that complainant Sadhu Singh son of Harbans Singh has got registered the

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case with the allegations that accused/applicant Swaran Kumar alongwith co-accused Anju and Sukhdev Singh have allured the complainant to send his sons Amarjit Singh and Sukhdeep Singh to Canada and for this purpose, they have charged a sum of Rs. 25,50,000/- from the complainant. Complainant further alleged that later on the accused have neither sent his sons to Canada and nor returned their money and passports. As such, the accused have cheated to the complainant to the tune of Rs. 25,50,000/-. On the basis of these allegations, case has been got registered and after completion of investigation, challan has already been presented and accused/applicant have already been charge sheeted, whereas five witnesses have been partly recorded.

3. Learned counsel for the accused/applicant pressed for regular bail on the ground that accused/applicant has been falsely implicated in the present case and application moved by accused/applicant under Section 311 of Cr.P.C. on 11.01.2024 has not been disposed of due to non filing of reply by the prosecution, therefore, accused/applicant is entitled for bail on these grounds. He prayed for regular bail on these grounds.

4. Learned Addl. PP for State opposed the bail application on the ground that previous first bail application of accused/applicant has already been dismissed by another co-ordinate court during summer vacation on 09.06.2023 with detailed order. Afterwards, prosecution examined five witnesses, but accused/applicant has not cross examined the witnesses and taking adjournments on the one or the other pretext, therefore, he is not entitled for any concession of bail. He further pressed

that even reply to the application under Section 311 of Cr.P.C. was already filed on 02.04.2024, whereas present bail application has been moved on 20.04.2024, but learned defence counsel is taking adjournment and prayed for dismissal of bail application on these grounds.

5. I have heard the learned counsel for the accused/applicant, learned Addl.P.P for the State and have gone through the record carefully.

6. After hearing their rival submissions and perusal of record reveals the fact that accused/applicant has cheated to the complainant to the tune of Rs.25,50,000/- and complainant has got registered the case with the specific allegations in regard to various payments in the accounts of accused. As such, apparently there is more than sufficient material on this account in the statement of complainant Sadhu Singh. Moreover, complainant Sadhu Singh has already been examined by prosecution as PW1 and cross examination was got deferred by learned defence counsel from time to time and ultimately, court was constrained to record it as Nil after giving opportunity to learned defence counsel. Afterwards, prosecution has also examined PW2 to PW5, but PW2 has been cross examined, whereas other witnesses PW3 to PW5 have not been cross examined by learned defence counsel and taking adjournments on one pretext or the other. As such, this act and conduct on the part of accused/applicant shows that he has lingered on the trial. Moreover, reply to the application under Section 311 of Cr.P.C. has already been filed on 02.04.2024, which is required to be disposed of by learned trial court on advancing arguments by learned defence counsel. However, from this

record, it is clear that no substantial circumstances have been changed, rather incriminating evidence has already come on the record, but learned defence counsel is not cross examining the witnesses.

7. Furthermore, earlier bail application filed by accused/ applicant has already been dismissed by learned co-ordinate court vide order dated 09.06.2023. It is settled principle of law that right to file successive bail application accrues to the applicant only on existence of a material change in the circumstances. A material change in circumstances settled by law is a change in the facts situation or law, which requires the earlier view to be interfered with or where the earlier finding has become obsolete. On this account, Hon'ble Apex Court in **State of Madhya Pradesh Versus Kajad, Criminal Appeal No.907 of 2001, decided on 06.09.2001**, observed as under:-

“It has further to be noted that the factum of the rejection of his earlier bail application bearing Misc. case No.2052 of 2000 on 5.6.2000 has not been denied by the respondent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in **Hari Singh Mann v. Harbhajan Singh Bajwa & Anr. [2001 (1) SCC 169]** and various other judgments”

Similarly, in case titled as **State of Maharashtra Vs Buddhikota Subha Rao, AIR 1989 Supreme Court 2292**, Hon'ble

Supreme Court has held that there must be substantial change to maintain the second bail petition and observed as under:-

“Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation, which would mean a substantial change having a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence”

8. Keeping in view of these facts, circumstances, gravity of offence and seriousness of allegations, this court is of the considered view that accused/applicant does not deserve any concession of regular bail. Accordingly, present second regular bail application of accused/applicant Swaran Kumar alias Shravan Kumar is hereby dismissed. However, any observations made herein above shall have no effect on merits of main case. Record of learned trial court be sent back alongwith copy of this order, whereas bail application file be consigned to Record Room.

Pronounced:

Dated: 29.04.2024

ramesh chander\*

(Dharminder Paul Singla),  
Addl. Sessions Judge,  
Jalandhar.[UID No. PB0083]

Swaran Kumar Vs State of Punjab

Present: Sh. Puneet Sareen, Advocate, for the Accused/Applicant  
Sh. Gurpreet Singh, Addl. Public Prosecutor for the State

Record of learned trial court received. Arguments on bail application heard. Vide my separate detailed order of even date, instant bail application has been dismissed. Record of learned trial court be sent back alongwith copy of this order, whereas bail application file be consigned to Record Room.

Pronounced:

Dated: 29.04.2024

(Dharminder Paul Singla),  
Addl. Sessions Judge,  
Jalandhar.[UID No. PB0083]

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