IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-20161 of 2015
Date of decision : July 07, 2015

Neelam Singh and another

...Petitioners...

versus

State of Haryana

...Respondent...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. R.S. Rai, Sr. Advocate with
Mr. Aman Vashisht, Advocate and
Mr. Gautam Dutt, Advocate,
for the petitioners.

Mr. Rohit Arya, AAG, Haryana,
for respondent-State.

Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Karan Garg, Advocate and
Mr. Teevar Sharma Dumerkha, Advocate,
for the complainant.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

Instant petition has been preferred under Section 438 of the Code of Criminal Procedure (for brevity, 'Code' only) by Ms. Neelam Singh and her husband Govind Singh, seeking pre-arrest bail, feeling apprehension of their arrest, in case FIR No. 191, dated 09.04.2015, under Sections 420, 406, 467, 468, 471, 477-A, 120-B IPC and Section 628 of Companies Act, 1956 (for short, 'Act'), at Police Station Palam Vihar, Gurgaon.

2. Shortly put, case of prosecution is that petitioner No.1 along with her husband- Govind, Himmat Yadav, Dr. Harish Yadav and Dr. Anil Yadav constituted a company in the name and style 'LIFE STYLE SUPERTECH PVT. LTD.”. Dr. Harish Yadav had invested ₹3,10,00,000/- in the company whereas Himmat Yadav and petitioner No.2 invested an amount of ₹60,00,000/- and ₹7,50,000/- respectively. Since, Himmat Yadav developed familiar relation with Dr. Harish Yadav, he has been frequent visitor to his house and remained in his company for a considerable time. He was well aware of financial position and assets of Dr. Harish Yadav and has been keeping an evil eye on it. Thus, around November-December 2011, Himmat Yadav came up with a lucrative proposal to invest in a company for doing real estate business and succeeded to induce Dr. Harish Yadav to invest money in a housing project. Accused-Govind Singh along with his wife Neelam Singh was earlier running a company in the name and style of 'FAIR 4 PROMOTERS & DEVELOPERS PVT LTD.” which was practically not doing any business since 2011. Complainant-Harish Yadav invested money in the aforesaid company, the name of which was subsequently changed to “LIFESTYLE SUPERTECH PVT. LTD.”. In pursuance of planning, accused Himmat Yadav and Govind Singh along with his wife succeeded to persuade complainant to invest ₹3,10,00,000/-.

Besides it, ₹3,57,00,000/- was collected as advance payment from the customers against the booking of the plots. Only a meagre amount was paid by Himmat Yadav and Govind Singh i.e. ₹60,00,000/- and ₹7,50,000/-, respectively in July 2012, at the time of purchasing land measuring 42 bighas. Not only this, they induced Director Rahul Rao to invest more money and subsequently cheated him with false representations. In January 2012, accused Himmat Yadav in conspiracy with Govind Singh and his wife indulged in collecting the advances from customers. At that time, Director and chairman noticed that accused persons have collected approximately ₹1 crore from various customers, on account of advance bookings, which was never accounted for or deposited in the bank account of the company. It was further transpired that an amount of ₹60,00,000/-, which was earlier invested by Himmat Yadav in purchase of land was wrongly adjusted by him against the booking of several plots in his own name by making fake receipts and forged documents. Similarly amount paid for 14,500 equity shares in his name amounting to ₹1,45,000/- was wrongly used as advance money for a plot in his relative's name. Thus, for a single amount of ₹1,45,000/- paid to the company, Himmat Yadav took equity share of the company. He also received for the equal amount towards booking of plot. The aforesaid unlawful activity done by Himmat Yadav resulted into misappropriation of money of the company.

3. It has further been alleged that from the perusal of the record of the company, it transpired that accused have conspired

with each other and misappropriated huge amount from the company by issuing false and forged receipts and also prepared false account books to defraud the complainant and entire money belonging to the company was illegally pocketed and embezzled. Besides this, they also duped/cheated investors by issuing them false booking receipts of the plots and no amount was ever deposited by them in this regard. ₹66,25,000/- was siphoned/embezzled by Himmat Yadav, which was received by him from various investors against 36 forged receipts dated June 20, 2012 amounting to ₹1,80,000/- each, besides, ₹1,45,000/- of share capital. The said money was never accounted in the company accounts and books. Similarly, Himmat Yadav also misappropriated huge amount of ₹85,27,612/- by allotting various units depicting in the FIR, against the prevailing price to various investors. This amount was also not shown in the account books and was collected by him. Similarly, ₹30,00,000/- was amassed by accused Ms. Neelam Singh. She got 16 plots booked in her own name and adjusted the booking amount as commission. She sold 9 plots out of the same and collected crores of rupees. In fact, she was not entitled to any commission under the provision of company law. She forged false receipts to show the same as adjusted without knowledge and consent of any other member/director of the company. It also came to light that Ms. Neelam Singh was receiving cheques from various clients as advanced money and in this context, she collected and embezzled a sum of ₹10,00,000/-. Her husband Govind Singh got 8 plots booked in his own name and adjusted the booking amount as commission. He was also not entitled to any commission. To grab this amount, accused forged false receipts. Not only this, accused Govind Singh collected ₹35,04,500/- from various customers and investors on the pretext of installments and booking amount, which was never deposited in the accounts of the company. On coming to know about the misappropriation and forging of receipts etc., complainant lodged a complaint under Section 156(3) of the Code. On the basis of which, instant case was registered and investigation was put into motion.

4. The contention of learned counsel for petitioners is that present FIR is nothing but a counter blast to the proceedings pending before the Company Law Board, New Delhi (for short, 'Board' only) initiated by petitioners along with other directors of the company as Dr. Harish Yadav-complainant happens to be a person, who was managing affairs of company (presently holding majority shares) has siphoned away huge amount so that petitioners may not prosecute those proceedings. The matter with regard to misappropriation of company's funds is still pending adjudication before the Board. In fact, company had purchased chunk of land from one Tara Singh, who has paid the entire consideration from time to time w.e.f. April to September 2012. Company has sold the said land to number of allottees/persons. It appears that neither Tara Singh nor any other allottee/person to whom the company has sold the land has come forward to lodge a complaint either against company or its directors. This fact is itself suggestive of the fact that no amount is due to the

company towards the land owner and money received from the allottees/persons have been duly utilized by company. The instant case has been got registered by complainant just to put pressure upon petitioners to not to pursue the matter pending before the Board. Moreover, petitioner No. 1 Neelam Singh has nothing to do with company or its assets/funds as she resigned from directorship of company on January 09, 2012 and on the same day Dr. Harish Yadav, Dr. Anil Yadav along with Dr. Himmat Yadav were appointed as Directors of the company. It would not be out of place to mention that since petitioner No. 1 resigning from directorship of company, she had no role to play. She has been falsely implicated in the present FIR as she happens to be the wife of petitioner No.2. After the change of name and style of company to M/S LIFE SUPERTECH PVT. LTD. on March 19, 2012, Dr. Harish Yadav and petitioner No.2 entered into an agreement dated April 09, 2012 bearing Nos. 928, 929 and 930 with one Tara Singh s/o Jagmal Singh, to purchase land measuring 62 bighas (approximately). Thereafter, land was registered in the name of the company. As per the agreement of sale, total value of land measuring 62 bighas (approximately) @ 35 lacs per bigha came out to be Rs.17,31,96,800/-. However, only 51 bighas was got registered in the name of company @ ₹7,35,50,000/-(as per circle rate). Thereafter, 3 new additional directors were appointed namely Atul Singh, Ms. Suman Yadav and Rahul Rao on June 22, 2012. Since, there was a huge difference between the price mentioned in the sale deed and actual amount paid by the company to the seller, a notice was served upon the seller Tara Singh as well as upon the purchasers i.e. Dr. Harish Yadav and petitioner No.2 by the office of Sub-Registrar, Tehsil Tijara, District Alwar dated March 20, 2015, asking them to first produce all the original or photocopies of all the agreements as well as sale deed, if any, executed between the parties, on the basis of said agreement. Even as per case of complainant-Dr. Harish Yadav, he came to know in January 2012, about the malpractices of petitioners and Dr. Himmat Yadav but he only lodged a complaint in the month of January 2015 i.e. after three years, which is otherwise an after thought.

5. It has been next urged by learned counsel for petitioners that petitioner No.1 was not the Director of company after she resigned from its directorship and she was only a shareholder in the aforesaid company. She has been intentionally involved in instant FIR in order to put pressure upon her husband i.e. petitioner No.2, who is one of the Directors in aforesaid company, who has lodged a complaint before the Board along with Dr. Himmat Yadav long back in December 2013 against Dr. Harish Yadav, Suman Yadav, Atul Kumar Singh and Rahul Rao, who were Directors of the company and OP Mishara, (Chartered Accountant) for illegally terminating and resuming the directorship of co-accused Himmat Yadav and Govind Singh-petitioner No.2 by showing fake meetings and misusing the funds of company. Their counsel has also given an undertaking before the Board to maintain status quo. In fact, Dr. Harish Yadav

and others have conspired together with malafide intention just to grab 29% share of the accused and have illegally removed Dr. Himmat Yadav and Govind Singh from directorship of the complainant's company by organizing fabricated meeting and creating fabricated documents without any prior intimation to co-accused. Petitioners have neither misappropriated any amount nor forged any documents/receipts. All the allegations are false and wrong. Moreover, petitioners undertake to cooperate and join the investigation as and when required by the police as well as to comply with all the terms and conditions imposed by this Court, in case, they are granted the concession of bail. Their custodial interrogation is otherwise not required as the entire case of prosecution is based upon documentary evidence as is also of civil nature.

6. These arguments have been controverted by learned counsel for the State as well as learned counsel appearing on behalf of the complainant. It has been submitted by them that though Ms. Neelam Singh resigned from the directorship of company on January 09, 2012 but she having hand in glove with her husband-Govind Singh and Dr. Himmat Yadav, got allotted 16 plots and sold away the same to different persons. The amount so collected by her was not accounted for in the account of the company rather the same was misappropriated or siphoned by her. Similarly, a large number of plots were got allotted by her husband-Govind Singh-petitioner No.2. He also sold away those plots to various persons but did not deposit the amount in the company's accounts. Rather, they both adjusted

the amount of those plots against commission, to which they were not legally entitled under Section 299 of the Act. Not only this, they also forged and fabricated records. Since, petitioners have siphoned/embezzled huge amount of the company running into crores, they do not deserve concession of bail. Learned counsel for respondents accordingly prayed for dismissal of petition.

7. This Court has given a deep thought to the rival submissions made by learned counsel for the parties and has meticulously gone through the records available.

8. By now, it is pretty settled that discretion vested in the Court under Section 438 of the Code, should be exercised sparingly that too with caution and prudence, only in case where the Court is of the view that allegations appear to be false and frivolous or where the investigation can be carried out without taking a person in custody or where interrogation of the petitioner is not necessary.

9. Undoubtedly, Ms. Neelam Singh-petitioner No.1 was a Director of the company, who is stated to be resigned on January 09, 2012 whereas petitioner No.2 Govind Singh, her husband is the Director of the company along with some other persons. There are specific allegations against both petitioners that they in connivance with Dr. Himmat Yadav, booked 63 plots of the company, valuing ₹15 crores, in the name of their near relatives and subsequently, sold away the same to customers and collected huge amount, which was not accounted for by them in the account of the company. Though, Neelam Singh-petitioner No.1 resigned from the company on January

09, 2012 but she succeeded in getting allotted 16 plots and as per allegations in the complaint, price thereof has been shown to be adjusted as commission, which were subsequently sold by her to different persons and said amount was not deposited in the account of company. To the similar effect are allegations against petitioner No.2 that he got allotted 14 plots. Since, both petitioners were directors and as such, they were not entitled to any commission under the provisions of the Act. During the investigation of this case, various investors have also got recorded their statements with police that they have been cheated and defrauded. It has also been alleged by complainant that petitioners have prepared fake MOU as well as original receipt issued to various investors. Petitioners are alleged to have committed embezzlement of several crores of rupees of the company by playing fraud. The mere fact that instant case has been lodged during pendency of proceedings pending before the Board, does not ipso facto mean that allegations are false or that instant case has been registered just to put pressure upon petitioners not to prosecute proceedings pending before the Board. Similarly, at this stage, contention of learned counsel for petitioners is not of much relevance that the entire case is based upon documentary evidence or that custodial interrogation of petitioners is not required. Especially in the circumstances that there are bundle of documents, which are alleged to be forged and fabricated, this Court is of the considered view that custodial interrogation of both petitioners is necessary to unearth all the ramifications involved in this case and this Court is of the view that in the absence thereof, investigation of this case is likely to be stultified.

10. Keeping in view the aforesaid aspect of the case, this Court does not deem it a fit case to grant the concession of bail. Accordingly, petition stands dismissed.

July 07, 2015 **(JASPAL SINGH)**
sonika **JUDGE**