IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM NO. M-33902 of 2014 (O&M)
DECIDED ON : May 15, 2015

JUNAID A. SYED AND ANOTHER

...PETITIONERS

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Sunil Chadha, Sr. Advocate,
Mr. M.S. Atwal, Advocate
for the petitioners.

Mr. J.S. Sekhon, AAG, Punjab.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Harparteek S. Sandhu, Advocate
for the complainant.

<u>JASPAL SINGH, J. (ORAL)</u>

Instant petition has been filed under Section 438 Cr.P.C seeking pre-arrest bail to the petitioners in case FIR No. 98 dated July 01, 2013 under Sections 406, 420 and 120-B IPC registered at Police Station Division No.2, Ludhiana City.

2. Brief facts giving rise to the instant *lis* are that M/s Laj Impex

deals in import and export business of various items/commodities. In the month of February 2008, Junaib A. Syed Hassan Akbar told the complainant-Mehar Chand Singla and his brother Daya Chand Singla that he alongwith his father Hassan Akbar Ali were running a firm under the name and style of Almas Export and Import Pvt. Ltd. Consequent upon the proposal given by Junaib A. Syed. He sent two proforma invoices one for supply of 500 matric tones of iron scrap @ US $395 per matric tone and other is 1400 matric tones of iron scrap @ US $ 380 per matric tone. Their firm sent US $ 99000 on March 03, 2008, US $ 1,00,000 on May 14, 2008, US $ 18,600 on May 15, 2005, US $ 50, 000 on June 03, 2008, US $ 48,500 on June 06, 2008 and US $ 75, 000 on June 26, 2008 vide TT through HDFC Bank Ltd from their concern M/s Laj Impex. But the company of the accused supplied them small quantity of Scrap and Bitumen, so that, they may consider that the party is genuine one. From the very beginning the intention of accused company was malafide to grab their amount with the intent to cause wrongful loss to them and wrongful gain to their company.

3. After a due enquiry into the allegations unfolded in complaint, instant case was registered and investigation was put into motion.

4. Learned counsel for the petitioners contended that they have been falsely implicated in this case by complainant-Mehar Chand Singla by completely distorting the factual position and by suppressing the material and substantial facts from the notice of police. In fact, through one Naresh Gupta, who has good family relations with petitioners, complainant-Mehar Chand Singla and his brother Daya Chand Singla came in contact with him, who showed their interest to import Metal Scrap from Saudi Arabia. At that time,

petitioner No.1 had been working as a sponsor with a firm in the name of Al-Gharbie Est. Trading and Transport Company. Through his e-mail dated February 17, 2008 Daya Chand Singla sent three names to petitioner No.1 so as to make arrangement for inviting the said three persons in connection with doing business. Thereafter, on February 26, 2008, a proforma invoice was sent in the name of M/s Laj Impex from the firm namely Mohd. Barakah Al-Zoubail Trading Est. for 500 metric ton of heavy melting scrap @ US $ 395 per matric ton for a total sum of US $ 1,97,500. The said proforma invoice was signed by petitioner No.1 as a sale executive of Mohd. Barakah Al-Zoubali Trading Est. On the basis of said proforma invoice, complainant's firm namely M/s Laj Impex transferred US $ 99,000 out of US $ 1,97,500, in the name of Mohd. Barakah Al-Zoubali Trading Est. Against the said proforma invoice dated February 26, 2008, two consignments of four containers each were sent by Al-Jarda Trading Company to M/s Laj Impex, firstly on April 06, 2008 and then, on April 28, 2008, total valuing US $ 70,000. Since out of the aforesaid amount of US $ 99,000, of which complainant's firm had sent to Mohd. Barakah Al-Zoubali Trading Est, goods were dispatched only worth US $ 70,000, therefore, petitioner No.1 through his e-mail dated May 01, 2008 requested the owner of Al-Jarda Trading Company that remaining amount be transmitted to Mohd. Barakah AL-Zoubali Trading Est. In response to said e-mail sent by petitioner No.1, Al-Jarda agreed to make payment of balance amount after one week.

5. It has further been submitted that in fact, there were direct dealings of M/s Laj Impex through Daya Chand Singla who also visited Saudi Arabia and stayed there with Mohd. Barakah Trading Co. Even letter dated

November 18, 2013 (Annexure P-11) clearly depicts that firm namely Mohd. Barakah Al-Zoubali Trading Est (for short "Zoubali Trading Co.") of which Mohd. Barakah Al-Zoubali, who is a Saudi Arabian National, is the sole proprietor of Zoubali Trading Co., which alone had direct dealings with complainant's firm. Petitioners or their firm namely Almas Exports and Imports Pvt. Ltd. had no role to play in the said business transactions. Matter was also brought by petitioner No.1 to the notice of Mohd. Barakah Al Zoubali after registration of instant case and in response to the said e-mail Mohd. Al Zoubali explained that complainant has lodged an absolutely false criminal case against him and his family. Mohd. Barakah Al Zoubali addressed a letter to Daya Chand Singla on September 20, 2014 whereby, he invited them to settle the accounts and further that if any amount is outstanding against it, he is ready to make the payment thereof.

6. While concluding his arguments, it has been submitted by learned counsel for the petitioners that though matter pertains to the year 2008 but FIR in the instant case has been registered after about 5 years. Moreover, no suit has been filed for recovery of amount which is otherwise time barred. Just to recover the amount in question in an illegal manner or to put pressure upon the petitioners, a false case has been registered to extort the money. Otherwise also, matter in dispute is purely of civil nature. Petitioners have already joined investigation and in the given circumstances their custodial interrogation is not at all required. Both the petitioners also undertake to join investigation as and when required by the police and to abide by all the terms and conditions imposed by this Court in case they are granted the concession of pre-arrest bail.

6. Per contra learned State counsel as well as learned counsel for the complainant has strongly opposed the submissions made by learned counsel for the petitioners by submitting that FIR in question has been registered after a detailed enquiry. Petitioners are hands in glove with Mohd. Barakah Al-Zoubali who are running a fake and fictitious firm. Petitioners are admittedly directors' of the firm having their offices at Lucknow and Mumbai. They were instrumental in getting the business transactions and also received the amount but did not supply the requisite material. They cheated and committed fraud with the complainant. Custodial interrogation of petitioners is also necessary to unearth all the ramifications involved in this case. Moreover, this is not a simple case of civil liability. Petitioners have not joined investigation however, their arrest was stayed vide order dated September 30, 2014 enabling them to reconcile the matter before Mediation and Conciliation Centre. But they did not cooperate. Their custodial interrogation is necessary in the facts and circumstances of the case in hand.

7. This Court has given an anxious thought to the submissions made by learned counsel for the parties and have perused the record available on file.

8. Undoubtedly, a complaint was lodged by the complainant to the police and the matter was enquired into and deep and discreet enquiry was conducted. Ultimately, allegations levelled by the complainant against petitioners were *prima facie* established, which led to registration of instant case. Here it would be pertinent to mention that after registration of case, an application was moved by petitioners to get the matter re-investigated (Annexure R-1) and in pursuance thereof, matter was re-investigated by

Assistant Commissioner of Police, Special Branch, Ludhiana. Allegations contained in FIR are/were found to be substantiated. As such, the said application was recommended to be consigned. The said report (Annexure R-1) was furnished during the course of arguments by learned State counsel. A perusal of which reveals that Junaid A. Syed, his brother of Arshad @ Syed-petitioner No.2 and their father Sayed Hasan Akbar are the Directors of Almas Export and Import Pvt. Ltd. They are having their other firms at Saudi Arab such as Mohd. Barakah Al-Zoubali Trading Est, Al-Gharbie Trading Establishment and AL-Jarda Trading Est. etc. Sayed Saib Ahmed is also working with them. They are having their offices at Saudi Arab and Lucknow etc other than Mumbai. The company Almas Export and Import Private Limited sent e-mail on dated March 01, 2008 as well as on March 02, 2008 in which performa invoice Mohd. Barakah Al-Zoubali Trading Est was sent which bears the signatures of Junaid-e-Syed as Director of Almas Export and Import Private Limited. Another e-mail dated March 25, 2008 also bears his signatures as Director. The said performa invoice was sent on April 09, 2008 by a company namely Al-Gharbie Trading Establishment. Another e-mail dated May 06, 2009 was also sent vide which receipt of entire payment was confirmed. It has been concluded during inquiry that accused-persons with an intention to play fraud sent the goods from other firm and got deposited the money in the account of some other firm.

9. Moreover, it also appears that all the firms in Saudi Arab are also being handled by petitioners through their nears and dears. It is not a simple transaction. The matter is required to be probed at length and to unearth all

the ramifications involved in this case, custodial interrogation of petitioners is essential. This court is of the considered view that in the absence of custodial interrogation of petitioners investigation of this case is likely to be stultified.

10. Dismissed.

May 15, 2015 **(JASPAL SINGH)**
sham **JUDGE**