IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43746 of 2014 (O&M)
DECIDED ON: MAY 25, 2015

DEEPAK KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. J.S.Bedi, Sr. Advocate with
Mr. Sonpreet Singh Brar, Advocate
for the petitioner.

Ms. Priyanka Sadar, AAG, Punjab.

Mr. K.L. Goyal, Sr. Advocate with
Mr. Munish Bansal, Advocate
for the complainant.

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

Instant petition has been preferred by Deepak Kumar-petitioner under Section 438 Cr.P.C. seeking pre-arrest bail in case FIR No. 428 dated November 25, 2014 under Sections 381 and 420 IPC registered at Police Station Kotwali, Bathinda, District Bathinda.

2. The case of prosecution shortly put is that a complaint was lodged by Sh. Sham Lal Bansal, Advocate against the petitioner unfolding that he is practising as an Income Tax Advocate at Bathinda for the last 35 years. Whereas, petitioner has been working with him for the last more than 10-12 years till the year 2009-2010 and he used to keep and maintain the office record. He also used to receive the fees and money from the

clients/dealers for payment of tax. In that regard he used to keep and maintain a diary for the payment of tax and receipt of money/fees. Generally, notices are issued after 2-3 years of filing of returns and on receipt of notices verification of returns is to be conducted. During verification, it came to light that petitioner has not deposited the tax of some firms and he has misappropriated the money of said firms. Now, the clients of the said firms are harassing him (complainant) in that regard by way of demanding money from him. It has further been highlighted in the complaint that though complainant had a talk number of times with petitioner yet it did not fetch any fruitful result. Even he did not return the diaries. He has intentionally caused unlawful loss to his clients and has taken away the diaries/record intentionally with mala-fide intention. On the basis of above-said complaint, instant case was registered and investigation was put into motion.

3. Learned counsel for the petitioner contended that neither any fraud or cheating has been committed by the petitioner with the complainant nor he has siphoned any amount from any of the firms. In fact, petitioner obtained a decree of Bachelor in Commerce (B.Com) and earlier he was doing accounts work with some firms including M/s Goyal Rice and General Mills Bucho Mandi, which belongs to the in-laws of complainant. Subsequently, on the asking of complainant he started working as a clerk with him (complainant) who had promised that he will make him one of the best tax practitioners. On his asking, he left the job and joined him as a clerk. However, in the year 2009, he started his own practice in the field of income tax and got himself registered as income tax practitioner with Income Tax Department. Some of the clients of complainant shifted their work to him due

to which complainant got annoyed and started lodging anonymous complaints to the Income Tax Department as well as other departments alleging that petitioner is claiming himself to be taxation Advocate. These complaints were found false by the concerned authorities. The matter did not end here then in connivance with police authorities he get the instant case registered. The petitioner has never indulged in stealing the diaries belonging to complainant. However, 1-2 diaries were lying with him which have already been handed over by him to complainant. Petitioner has also joined investigation and he also undertakes to join investigation in future as and when required by the police.

4 Learned State counsel as well learned counsel for complainant contended that though, petitioner has joined investigation but he did not fully cooperate. The diaries are still required to be recovered which is only possible through custodial interrogation. Moreover, petitioner has fraudulently received the money from the clients of complainant for payment of tax to the Income Tax Department which has been misappropriated by him for his own use. The statements of those firms/persons were also sent to petitioner through e-mail on November 14, 2011, February 27, 2012 stating that an amount of Rs. 62,900/-, and Rs. 96,600/- is due against petitioner and further that a sum of Rs. 20,000/- is returnable to M/s Goyal Builders for not providing the account books for the financial year 2005-06 and 2006-07 but no such payment was made by the petitioner since diaries have been retained by the petitioner have not even produced before Investigating Agency during investigation by the petitioner. He does not deserve the concession of pre-arrest bail.

5 This Court has given an anxious thought to the contentions raised by learned counsel for the parties and has perused the record available.

6 Undisputably, petitioner has obtained the degree of Bachelor of Commerce (B.Com) and was earlier working as clerk with complainant at Bhatinda prior to the year 2009-2010 when he left his services and started his own practice in the field of tax. He also got himself enrolled as member of District Bar Association, Bhatinda as an Income Tax Practitioner. The diaries allegedly pertains to the year 2005-06 whereas petitioner left the services of complainant in the year 2009-2010. E-mails were sent by complainant in the year 2011-12 but to the utter surprise, no reference of any commission of theft of diaries was reflected at that time. Moreover, some of the diaries have already been produced by the petitioner during the course of investigation. It is a categoric statement of petitioner that no other diaries were available with him. There is also no record that petitioner was entrusted with any such diaries or the receipt of money/fees to be deposited by the firms with the Income Tax Department. No such complaint has been received either by any of the firms, whose money has been alleged to embezzle by petitioner or from Income Tax Department. Petitioner has joined investigation and entire case is based upon documentary evidence.

7 In view of above, order dated December 22, 2014 is hereby made absolute.

8 Disposed of.

9 However, petitioner shall abide by all the conditions as enshrined in Section 438 (2) Cr.P.C.

MAY 25, 2015 **(JASPAL SINGH)**
sham **JUDGE**