IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-590-2015
Date of decision : 28.01.2015

Sachin Dutta

... Petitioner

Versus

The State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.R.S.Rai, Senior Advocate
with Mr.Karan Pathak, Advocate
for the petiitoner.

Mr.Gazi Mohammad, DAG, Punjab.

Mr.Anmol Rattan Sidhu, Senior Advocate
with Mr. Suvir Sidhu, Advocate
for the complainant.

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<u>REKHA MITTAL, J.</u>

Sachin Dutta, an accused in FIR No.112 dated 27.07.2013 for offence punishable under Sections 420, 120-B of the Indian Penal Code (in short 'IPC') registered in Police Station City Hoshiarpur prays for grant of pre-arrest bail.

Counsel for the petitioner argues that as per allegations set up in the FIR, the petitioner neither made any representation nor inducement to the complainant to join business in partnership which was earlier being carried on by Kamaldeep Singh Anand and others including the present petitioner. No amount either in cash or by way of cheque purportedly paid by the complainant was given to the present petitioner. The cheque of Rs.31 lacs was statedly issued to accused No.1 namely Kamaldeep Singh Anand and the same must have been credited in his individual account. Though, no date, month and year of payment made in cash to accused No.1 has been mentioned but the receipt in regard thereof is statedly issued by accused No.1. There is nothing on record to suggest that any amount purportedly paid by the complainant was credited in the account of partnership firm. If the complainant had paid money to accused No.1 on representation made by accused No.1 & 2, the petitioner cannot be indicted in the crime merely because he was one of the partners in the business with accused No.1 & 2 who had been actually looking after business of liquor vends in Punjab as the petitioner is residing in Noida and looking after his other business affairs. The main accused are absconding and the petitioner is being made a scapegoat. The petitioner is ready to join investigation and face proceedings in accordance with law when otherwise his custodial interrogation is not required.

Counsel further contends that Sachin Dutta is also one of the victims of misdeeds of accused Kamaldeep Singh Anand and Ramandeep Singh Anand due to partnership between the petitioner and his co-accused in the business of liquor vends. The petitioner severed his connection with the partnership firm and in lieu of his share, two cheques for a sum of Rs.2,50,000/- and Rs.75 lacs as part payment were issued in favour of the company of the petitioner and the cheque of Rs.75 lacs was returned unpaid due to insufficiency of funds and the petitioner has filed criminal complaint under Section 138 of the Negotiable Instruments Act before the Court of Judicial Magistrate, Ghaziabad titled 'Balaji HiTech Constructions Pvt. Ltd. Vs. Kamaldeep Singh Anand and another'.

Counsel for the State and counsel representing the complainant

Sh.Anmol Rattan Sidhu, Senior Advocate have opposed the prayer for bail with the submissions that the petitioner being one of the partners of co-accused namely Kamaldeep Singh Anand and Ramandeep Singh Anand is also the beneficiary of the fraud committed with the complainant by duping him of huge amount. It is argued that the petitioner is one of the signatories of the partnership deed executed between the complainant and accused namely Kamaldeep Singh Anand, Ramandeep Singh Anand and Sachin Dutta and said partnership deed was prepared on 16.04.2010. It is further argued that despite a new partnership vide partnership deed dated 16.04.2010 was created, the accused with a dishonest intention did not submit the said partnership deed with the bank and carried out all banking transactions on the basis of earlier partnership deed. It is further argued that custodial interrogation of the petitioner is required for progress in investigation.

I have heard counsel for the parties and perused the records.

Counsel for the State, in response to a pointed query raised by the Court, has fairly conceded that the amount of Rs.31 lacs by way of cheque issued by the complainant has been credited in the individual account of accused No.1. As the complainant has not made specific mention of the dates on which he allegedly made certain payments in cash to accused No.1 it cannot be ascertained if any such amount was credited in the account of the partnership firm. Perusal of the allegations set up in the FIR would reveal that the present petitioner never made any representation to the complainant much less to induce him to enter into partnership. The allegations in the FIR and so also the partnership deed dated 16.04.2010 prima-facie shows that share of the present petitioner was reduced from 21% to 10%. The cheque of Rs.75 lacs, for payment to the firm of the petitioner issued by accused Kamaldeep Singh Anand and another got dishonoured and proceedings under Section 138 of the Negotiable Instruments Act filed by the petitioner are pending in the Court. As per the dissolution cum retirement deed, the petitioner ceased to be partner of said firm w.e.f. 14.07.2010 though the dissolution deed was executed on 14.07.2011. The petitioner is ready to join investigation and face proceedings without any default.

In view of the above, the petition is allowed and the petitioner is directed to join investigation within 10 days and on his appearance before the Investigating/Arresting officer, he will be released on bail on his furnishing bail bonds to the satisfaction of the concerned officer, subject to the following conditions:-

i) he shall make himself available for interrogation by a police officer as and when required;

(ii) he shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer; and

(iii) he shall not leave India without the previous permission of the Court.

In case, the petitioner fails to join investigation within the stipulated period, the petition shall be deemed to be dismissed.

(REKHA MITTAL)
JUDGE

January 28, 2015.
DK