201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23108-2016
Date of Decision : 27.09.2016

Manoj Kumar @ Kala ....Petitioner

versus

State of Punjab ....Respondent

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Sanjeev Duggal, Advocate
for the petitioner.

Ms. Simsi Dhir Malhotra, DAG, Punjab.

Mr. Gaurav Bhaiya, Advocate
for the complainant.

M.M.S. BEDI, JUDGE (ORAL)

Petitioner seeks concession of pre-arrest bail in a case registered at the instance of Pankaj Shukla alleging that complainant along with Ajay Sharma had purchased a property in March, 2009 and that while complainant was abroad, Ajay Sharma in connivance with the petitioner, Kuldeep Singh and Mohit Mahajan has mortgaged the property with the Bank and got a loan of Rs. 90 lacs for M/s Riya Enterprises. The allegation against the petitioner is that he is brother-in-law of Ajay Sharma and has impersonated as Pankaj Shukla as his photograph is affixed on the mortgaged documents in the Bank.

The petitioner claims that out of mortgage amount of Rs. 25 lacs; Rs. 15 lacs had already been returned to the Bank concerned by Ajay Sharma and that a sum of Rs. 10 lacs has also been deposited, pursuant to the interim orders passed by this Court.

Learned counsel for the complainant has intervened to oppose the application for pre-arrest bail contending that the petitioner

NEHA
2016.09.29 16:42
I attest to the accuracy and
integrity of this document

is the main accused who had impersonated as Pankaj Shukla by appearing before the Bank authorities.

After hearing learned counsel for the petitioner and counsel for the complainant and going through the record, it is apparent that the petitioner is not the only accused but he allegedly connived with Kuldeep Singh and Mohit Mahajan and Ajay Sharma who is the co-owner along with the complainant, in the property, while mortgaging the same with the Bank. It is also apparent that the Bank has also launched proceedings under SARFAESI Act to take the possession of the property and that the mortgage, in the present case, is not a registered mortgage but it is a usufructuary mortgage by depositing the original documents of title with the Bank. Mere existence of the photograph of the petitioner on the mortgage agreement is not sufficient enough to arrive at a conclusion that it is the petitioner who is solely responsible for the release of loan amount from the Bank. The interest of the Bank appears to be secured on account of the deposit of original title deed. The complainant, Pankaj Shukla holds an account with the Bank, his identity appears to be known to the Bank officials. The identity of the petitioner has been used by Ajay Sharma and other persons connected with Riya Enterprises to get a loan from the Bank. The right of the Bank stands secured under the statute. The petitioner has partly discharged the liability by getting the amount deposited through Ajay Sharma. Accused, Ajay Sharma, in the present case, has been arrested and released on regular bail.

NEHA
2016.09.29 16:42
I attest to the accuracy and
integrity of this document

In view of the above circumstances, I am of the considered opinion that petitioner is not exclusively liable for the cheating with the Bank. The arrest of the petitioner, in said circumstances, does not appear to be necessary. The petitioner can be granted the concession of pre-arrest bail.

The petition is allowed. It is ordered that in case of arrest of petitioner, he shall be released on bail to the satisfaction of the trial Court subject to the following conditions:-

1) Petitioner will join investigation as and when required.

2) Petitioner will not tamper with the evidence or hamper the investigation in any manner.

3) Petitioner will not leave India without the permission of the Court and will deposit his passport with the investigating agency.

Nothing said in this order is meant to be an expression of opinion regarding the extent of liability of the petitioner or the other co-accused. Observations made, are merely for the adjudication of the present application for pre-arrest bail.

(M.M.S. BEDI)
JUDGE

27.09.2016
Neha

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

NEHA
2016.09.29 16:42
I attest to the accuracy and
integrity of this document