

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-32073 of 2015

Date of Decision: February 16, 2016

Umanand Sharma son of Dev Shankar SharmaPetitioner

Versus

State of Punjab and anotherRespondents

and

Criminal Misc. No.M-32302 of 2015

Mukesh Kumar son of Shri Subhash ChanderPetitioner

Versus

State of Punjab and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Vikas Cuccria, Advocate for the petitioner/s.

Mr.DS Virk, Assistant Advocate General, Punjab.

Mr.Harvinder Singh Johal, Advocate for the complainant.

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TEJINDER SINGH DHINDSA, J.

This order shall dispose of two petitions i.e. Criminal Misc.No.M-32073 of 2015 (Umanand Sharma son of Dev Shankar Sharma v. State of Punjab and another) and Criminal Misc. No.M-32302 of 2015 (Mukesh Kumar son of Shri Subhash Chander v. State of Punjab and another). These two connected petitions have been filed under Section 438 of the Code of Criminal Procedure seeking concession of pre-arrest bail to the petitioners herein in case FIR No.93 dated 27.6.2015, under Sections 420, 406, 120-B

of the Indian Penal Code, registered at Police Station Sarhali, Tarn Taran.

2. Briefly, it may be noticed that FIR came to be registered on the complaint of Jasbir Singh son of Makhan Singh. Allegations in a nut-shell are of having been duped of a total sum of ₹2 crores approximately on the pretext of being given a gold franchise on behalf of Company, namely, Sai Gold. Complainant has stated that he was a partner in K.P.G. & J. Brothers Enterprise and Mukesh Kumar Mehta (i.e. petitioner in CRM No.M-32302 of 2015) had, initially, established contact by sending one Sukhdev Singh and Satnam Singh and thereafter complainant was invited to Amritsar where Sai Gold Company had a showroom. Mukesh Kumar Mehta had informed the complainant that Sai Gold Company would be interested in granting the gold franchise, but since village of the complainant i.e. Dhotian was a rural area, such franchise can be given for Jalandhar City as there is a large presence of NRIs in that area and there would be good potential for business. Even a written agreement dated 25.10.2012 was entered into, wherein Mukesh Kumar Mehta had acknowledged that a sum of ₹30 lacs had been received and the remaining amount of ₹1.70 crores be transferred in the SBI account of the Company. Allegations pertain to mis-appropriation of money as no transfer of any stock/gold was made. After a period of one year, Mukesh Kumar Mehta is stated to have issued post-dated cheques of an amount of ₹70,000/-, ₹12 lacs and ₹16 lacs, but the same, upon presentation, were dishonoured.

3. Further allegations are that even the directorship of

the Company was handed over in the name of some other person to evade liability.

4. It may be apposite to notice that even though Umanand Sharma (petitioner in CRM M-32073 of 2015) was not named in the FIR, but during the course of investigation, he has also been nominated as an accused being a close associate of Mukesh Kumar Mehta.

5. On 19.9.2015, while issuing notice of motion in CRM No.M-32073 of 2015, interim protection was granted to Umanand Sharma subject to his joining investigation on or before 28.9.2015.

6. Likewise, notice of motion was issued in CRM M-32302 of 2015 on 21.9.2015 and similar protection was granted even to Mukesh Kumar Mehta subject to his also joining investigation on or before 29.9.2015.

7. These two petitions came up for hearing on 21.1.2016 and whereupon State counsel apprised the Court that both the petitioners have not joined investigation. Learned counsel appearing for the petitioners, however, had joined issue at such point of time and had submitted that the petitioners had not been permitted to join investigation.

8. On 21.1.2016, the following order was passed by this Court in CRM No.M-32302 of 2015:

"Parties would portray a conflicting stand.

Learned senior counsel appearing for the petitioner would contend that the petitioner has not been permitted to join investigation. Counsel

appearing for the complainant as also learned State counsel would submit that inspite of specific directions having been issued by this Court for the petitioner to join investigation on or before 29.9.2015 and to cooperate with the Investigating Agency, the petitioner has chosen not to join and to appear before the Investigating Officer.

Under such circumstances, petitioner is directed to appear before the Investigating Officer on 25.1.2016 at 11 AM and to join investigation.

List on 16.2.2016.

Interim protection to continue till the next date of hearing.”

9. Similarly in CRM No.M-32073 of 2015, the petitioner was also directed to appear before the Investigating Officer on 25.1.2016 at 11.00 A.M. to facilitate joining investigation.

10. During the course of resumed hearing today, State counsel has informed the Court that the petitioners in these two petitions have chosen not to join investigation.

11. Learned counsel appearing for the petitioners would seek to justify the conduct of the petitioners by stating that Mukesh Kumar Mehta was unwell and, accordingly, had not appeared before the Investigating Officer. He submits that, however, a medical certificate dated 23.1.2016 had been produced before the Investigating Agency. Copy of such medical certificate has even been furnished in Court today for perusal.

Further contention of the learned counsel is that Umanand

Sharma (petitioner in CRM M-32073 of 2015) was under the impression that he was not required by the Investigating Agency and as such, had not appeared.

12. The submission raised by learned counsel for the petitioners does not inspire any confidence. On 21.1.2016, when these matters had come up for hearing, State had vehemently contended that the petitioners were not joining investigation inspite of having been insulated by an ad-interim protection subject to joining investigations on or before 29.9.2015. At that stage, it had been contended on behalf of the petitioners that they were not being permitted to join investigation. Even if this was the case, the petitioners ought to have taken resort to filing an application before the Illaqa Magistrate for issuance of necessary directions to be made to join investigation. The same was not done. Indulgence was shown by this Court yet again on 21.1.2016 by extending the interim protection to the next date of hearing i.e. till today subject to the petitioners appearing before the Investigating Officer on 25.1.2016. Petitioners have yet again not appeared before the Investigating Officer. The medical certificate being produced on behalf of Mukesh Kumar Mehta has been issued by a private Nursing Home. Suffice it to observe that in case the petitioners herein were, on account of any constraint, not in a position to appear before the Investigating Officer on 25.1.2016 as had been directed by this Court, it was open for them to have filed an application seeking modification/extension of time for joining investigation. Concededly, that has not been done. Stand taken on behalf of the petitioners lacks bonafide.

13. Petitioners are guilty of having misused the concession of interim protection as regards arrest as they have not joined investigation inspite of repeated opportunities having been granted. This Court would be constrained to record that an attempt has been made by the petitioners even to hoodwink this Court. Petitioners by their conduct have disentitled themselves from the concession of anticipatory bail.

14. Both the petitions are dismissed.

February 16, 2016

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether referred to Reporter? (Yes/No)