

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(202)

CRM-M-33322-2016

Decided on: December 21, 2016.

Khushwant Singh Virk @ Raja

.... Petitioner

Versus

State of Punjab

..... Respondent

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

Present: Mr. Ajaivir Singh, Advocate, for the petitioner.

Ms. Simsi Dhir Malhotra, DAG, Punjab.

Mr. Amit Verma, Advocate, for the complainant.

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

Petitioner seeks concession of pre-arrest bail in a case registered at the instance of Mukesh Goyal alleging that the complainant had been running a plywood factory and the petitioner had been supplying raw material from his firm, running business in the name and style of Punjab Timber Factory.

The allegation against the petitioner is that the complainant had given a sum of Rs.18 lacs in advance for supply of raw material but the petitioner failed to supply raw material and also did not return the money.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the case. He claims that the petitioner was a partner in the firm M/s Punjab Timbers with Gurjit Singh and Paramjit Singh and that other partners being not available, he has been made scape-goat and involved in the case. He has further argued that this case is, at the

most, a case of civil liability not warranting arrest of the petitioner or launching of criminal prosecution.

I have heard learned counsel for the petitioner, learned State counsel and learned counsel for the complainant besides going through the police record carefully.

As per the police record, the complainant had withdrawn a sum of Rs. 12 lacs from his bank account on the date of alleged transaction. The statements of the witnesses have been recorded regarding money having been handed over to the petitioner.

After hearing learned counsel for the parties and going through the facts and circumstances of the case, it can be observed that the dispute between the complainant and the petitioner, having arisen out of business transactions, is certainly a dispute of combination of civil and criminal liability.

As per the judgment of the Apex Court in **Lee Kun Hee and others Vs. State of U.P. and others, 2012 (1) R.C.R. (Criminal) 884**, it will always be open to the complainant to avail either of the remedies, for recovery of the amount due or prosecute the accused.

In view of the fact that the investigation is at initial stage, it will not be feasible for this Court to arrive at a conclusion whether the petitioner from the very beginning, had an intention to cheat or that the petitioner has been falsely implicated.

Without going into the merits of the case, at this stage, I am of the considered opinion that striking a balance between the right of liberty of the petitioner and the claim of the complainant for the money which is

alleged to have been obtained fraudulently by the petitioner from him and in view of debatable issue whether the liability of the petitioner as partner will be 100 percent or to the extent of 1/3rd, I am of the considered opinion that interest of justice would be adequately met in case liberty of the petitioner is protected simultaneously protecting the rights of the complainant without prejudice to the right of the parties to settle the controversy by adopting alternative modes.

Learned counsel for the complainant has referred to the observations in para 4 of the order of the Sessions Court which reflects the parties had made an attempt to amicably settle the dispute for which adjournment had been sought but for certain reasons the matter could not be compromised.

In view of said circumstances, the petitioner can be granted pre-arrest bail subject to the condition that the petitioner will pay a sum of Rs. 5 lacs within a period of one month to the complainant. This Court can impose a condition as per the provisions of Section 437 (5) Cr.P.C read with Section 438 (2) Cr.P.C which enables a Court to grant bail for the reasons on the condition mentioned in the said Sections and may also impose any condition as is considered necessary in the interest of justice. The ends of justice would be adequately met in case the liberty of the petitioner is protected subject to the above said condition in the interest of justice.

The petition is allowed. It is ordered that in case of arrest of petitioner, he will be released on bail to the satisfaction of the arresting officer subject to the following conditions:

- (i) The petitioner will join investigation as and when required;

- (ii) The petitioner will not tamper with the evidence or hamper the investigation in any manner;
- (iii) The petitioner will pay a sum of Rs. 5 lacs to the complainant within a period of one month subject to any final settlement arrived at between the parties without prejudice to the legal rights.

The amount will be paid in the shape of bank draft which would be handed over to the investigating officer who would be required to hand over the same to the complainant against a memo. The complainant will receive the said amount by giving an undertaking that in case the claim of the complainant is found to be false, he would be liable to return the amount with interest at the rate of 6 percent per annum.

In case of violation of any of the conditions, it will be open to the complainant to approach this Court for cancellation of bail.

(M.M.S. BEDI)
JUDGE

December 21, 2016

harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No