207.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41540-2016
Date of decision:06.12.2016

Sushil Kumar ... Petitioner

versus

State of Punjab .... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Karan Singla, Advocate, for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. Anil Kumar Garg, Advocate, for the complainant.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.20 dated 20.02.2016 under Sections 420 and 120-B IPC, registered at Police Station Amargarh, District Sangrur.

Mr. Anil Kumar Garg, Advocate, has put in appearance on behalf of complainant and filed power of attorney which is taken on record.

On the basis of complaint made by Gurdial Singh, the aforesaid FIR was registered against the petitioner, co-accused Harbans Lal and Parmatma Devi (mother of petitioner). The complainant had formed a firm with the petitioner-accused and Bhagwan Singh son of Gurdial Singh in the name and style of **M/s Guru Nanak Rice and Agro Products.** The complainant is the owner of the land as registry stands in his name. The Firm was dissolved on 15.11.2008 and all accounts were settled. All the three partners and witnesses appended their signatures and thumb-impressions on the Dissolution Deed in the presence of Tehsildar on

17.11.2008. The petitioner-Sushil Kumar and his brother-Harbans Lal are real sons of Parmatma Devi and are living jointly. On 02.05.2009, they were not the partners of said firm because it was dissolved on 15.11.2008 and the petitioner-Sushil Kumar did not have any right to withdraw money, but still he withdrew an amount of ₹11.50 lac from the above said firm through cheque on 02.05.2009. The petitioner-accused in collusion with his brother and mother is running a firm in the name and style of **Guru Nanak Trading Company, Grain Market, Dhuri** and transferred a sum of ₹11.50 lac to the above said firm. The petitioner being a partner did possess the power of issuing cheque till 15.11.2008, but he fraudulently by misusing the cheque of **M/s Guru Nanak Rice and Agro Products** diverted the said amount through cheque dated 02.05.2009.

Learned counsel for the petitioner has argued that the Dissolution Deed dated 15.11.2008 is a forged and fabricated document. Even the signatures appended on the disputed Dissolution Deed were got done on a blank stamp paper and the petitioner never signed the said Dissolution Deed. The Dissolution Deed was prepared after getting blank signatures of the petitioner. The petitioner was acting as a partner at the time of issuing cheque and the same has never been disputed by the complainant. Petitioner has issued a cheque to **Guru Nanak Trading Company** in lieu of paddy purchased by **M/s Guru Nanak Rice and Agro Products**. Therefore, cheque dated 02.05.2009 is based on transactions between two firms as referred above.

Learned counsel for the complainant and State counsel have argued that the petitioner is a signatory to the Dissolution Deed dated 15.11.2008 and on 02.05.2009, when the cheque, in question, was issued, he was not a partner in the firm but still he malafidely transferred ₹11.50 lac through cheque in another firm i.e. **Guru Nanak Trading Company** in which his brother and mother-Parmatma Devi were the partners. Since the petitioner was competent to issue cheque only upto 15.11.2008, he has committed a fraud with the complainant by diverting the amount of ₹11.50 lac.

Heard, learned counsel for the parties.

The deed of dissolution was executed before the Naib Tehsildar. The execution of documents is alleged by one party, but denied by other party. Interestingly, the petitioner has filed a civil suit for declaration to the effect that he is a partner of **M/s Guru Nanak Rice and Agro Products** to the extent of 40% share as per Partnership Deed dated 04.09.2000 and the alleged Dissolution Deed dated 15.11.2008 is a result of fraud and misrepresentation and, therefore, not binding upon him. But interestingly, he withdrew the said suit on the premise that he has compromised with the defendants on 20.04.2011. Thus, petitioner cannot take different stand at different situation.

Considering the nature of allegation that the petitioner, despite dissolution of firm, has diverted the amount by issuing cheque, this Court finds that the allegations against the petitioner are serious in nature and, therefore, his prayer for grant of anticipatory bail cannot be accepted.

Accordingly, present petition stands dismissed.

(HARI PAL VERMA)
JUDGE

06.12.2016
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No