IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.M-43787 of 2015

Date of Decision: March 02, 2016

Davinder Raghav @ Davinder Singh son of
Shri Mahender Singh ....Petitioner

Versus

State of Haryana ....Respondent

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

Present: Mr.Ashok Aggarwal, Senior Advocate with
Ms.Ritam Aggarwal, Advocate for the petitioner.

Mr.Vivek Saini, Deputy Advocate General, Haryana.

Mr.RS Rai, Senior Advocate with
Mr.Ashish Chopra, Advocate for the complainant.

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TEJINDER SINGH DHINDSA, J.

Petitioner seeks benefit of regular bail pending trial in FIR No.475 dated 12.10.2015, registered at Police Station Badshahpur, District Gurgaon under Sections 406 and 420-B of the Indian Penal Code (Sections 467, 468, 471 of the Indian Penal Code added subsequently).

2. Briefly, it may be noticed that the FIR in question came to be registered on the complaint of Vijay Kumar Aggarwal who stated himself to be authorized by M/s Benchmark Infotech Private Limited. It was stated that M/s Benchmark Infotech Private Limited is a Company duly registered and incorporated

under the Companies Act, 1956. M/s M3M India Private Limited is a holding Company of M/s Benchmark Infotech Private Limited and both the Companies are stated to be into real estate development/business. The Companies are stated to have purchased various parcels of land in and around Gurgaon. As per complainant, present petitioner was working as Head of Revenue with M/s M3M Private Limited and co-accused Devinder Singh was working as 'Patwari' under his supervision and was also stated to be one of the Directors in various group/subsidiary companies. It was stated that the present petitioner i.e. Davinder Raghav and co-accused Devinder Singh used to actively participate in the purchase of land on behalf of the complainant-Company and its subsidiary/group companies. It was stated that the two afore-noticed accused were in possession of several blank signed cheques issued by the authorized signatory on behalf of the Company and such cheques had been given to facilitate urgent payments to different land owners towards purchase of land etc. and to finalize the deals. Complainant alleged that in the beginning of the year 2014, the accused in a calculated mood submitted resignation from the Company. Subsequently, in the month of April 2015, various illegal acts committed during the course of employment by the accused including the present petitioner came to the notice of the complainant-Company. One such illegal act is stated to be of having forged a Board resolution and on the strength thereof having facilitated a lease-deed of a valuable piece of land belonging to a subsidiary company in favour of Naresh Kumar i.e. real brother-in-law of the present petitioner for a paltry sum of money. In this regard, two FIRs bearing No.558 dated 6.5.2015 and No.628 dated 20.5.2015 were registered at Police Station City Gurgaon under Sections 420, 467, 468, 471 of the Indian Penal Code.

3. Further allegations made by the complainant are that two cheques bearing No.631342 dated 14.5.2015 and No.631343 dated 21.5.2015 signed by the then authorized signatory Shri Tarun had been presented for encashment by the accused and which were dishonoured for want of “insufficient funds”. Precise allegation raised in the FIR is that co-accused Devinder Singh has mis-used the two blank signed cheques signed by the authorized signatory of the Company Shri Tarun and which were in his possession and issued the same in favour of the present petitioner i.e. Davinder Raghav for a sum of ₹10 crores and ₹15 crores respectively. Further allegation is that on the date as mentioned on these two cheques, Shri Tarun was no longer the authorized signatory as would be evident for a Board Resolution passed on 29.7.2013. In a nut-shell, accusations are with regard to criminal breach of trust and also forgery of valuable instruments.

4. On behalf of the petitioner, it has been submitted that the complainant-Company had entered into a Memorandum of Understanding with the petitioner duly executed and signed on 14.5.2013 at Gurgaon in respect of land situated within the Revenue Estate of village Dhorka, Tehsil and District Gurgaon. Under such Memorandum of Understanding, the petitioner was obligated to obtain licence from the Department of Town and

Country Planning Department, State of Haryana as also to settle a partition case with the complainant-Company that was pending before the revenue authorities. The Memorandum of Understanding was stated to be valid for three years and it is contended that the cheques in question, though post-dated, were issued for a sum of ₹10 crores and ₹15 crores as per scheme of Memorandum of Understanding. It has been vehemently contended that the cheques were signed by the authorized signatory of the Company prior to 14.5.2013 though the same were to be presented in the year 2015 after the petitioner had discharged his obligations in the light of the Memorandum of Understanding. Contention is that the cheques in question had been handed over to the petitioner under a valid and enforceable contract by the complainant-Company towards discharge of its obligations. It has also been argued on behalf of the petitioner that upon the cheques having been presented and having been dishonoured, a notice under Sections 138, 141 and 142 of the Negotiable Instruments Act had been served upon the complainant-Company on 14.8.2015 by the petitioner and thereafter even a complaint dated 7.9.2015 was filed under the Negotiable Instruments Act. Vide order dated 8.9.2015, learned Judicial Magistrate had summoned the complainant for offence under Section 138 of the Negotiable Instruments Act and copy of the summoning order has been adverted to having been placed on record at Annexure P8. The present FIR registered on 12.10.2015 is stated to be a counter-blast to the proceedings initiated by the petitioner under the Negotiable Instruments Act.

5. Per contra, learned counsel appearing for the complainant has submitted that even though the FIR came to be registered on 12.10.2015, but the complaint had been submitted in the month of July, 2015 itself i.e. prior in point of time to the proceedings initiated under the Negotiable Instruments Act. While opposing the prayer for grant of bail, it has been argued that the Memorandum of Understanding dated 14.5.2013 which is the main plank of defence set up is also forged as the signatory on such alleged Memorandum of Understanding on behalf of M/s Infotech Company i.e. Deepak Thakral has disowned his signatures. It is contended that the allegations against the petitioner are serious in nature of having betrayed the confidence of the complainant-Company and having forged documents in collusion with other co-accused.

6. Having heard learned counsel for the parties at length and having perused the record, this Court is of the considered view that the petitioner is entitled to benefit of bail.

7. Petitioner is in custody since 16.11.2015. This Court has been apprised that after completion of investigation, the challan qua the present petitioner has been presented on 17.2.2016 and the stage now before the trial Court is for framing of charges.

8. The issue with regard to the Memorandum of Understanding dated 14.5.2013 being a forged document would be a matter of evidence to be led during the course of trial.

9. It would also be debatable as regards offence under Section 420 of the Indian Penal Code being made out against the

petitioner as it is the version of the complainant-Company itself that the two cheques in question had been entrusted to the petitioner.

10. It is not the case made out on behalf of the State or learned counsel appearing for the complainant that the petitioner if granted benefit of bail, would be in a position to hamper the course of trial and would be in a position of tampering with the evidence or influencing/intimidating the witnesses.

11. Without making any observations on merits, the present petition is allowed. Petitioner is directed to be enlarged on bail subject to satisfaction of Chief Judicial Magistrate/Duty Magistrate, Gurgaon.

(TEJINDER SINGH DHINDSA)
JUDGE

March 02, 2016
SRM

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