

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

(202)

CRM-M-8549-2016 (O&M)

Decided on: November 17, 2016.

GP. Capt. V.K. Gandhi and others

.... Petitioners

Versus

State of Haryana

..... Respondent

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

Present: Mr. R.S. Cheema, Sr. Advocate, with
Mr. Jasreet Singh, Advocate, for the petitioners.

Mr. Deepak Sabharwal, Addl. A.G., Haryana.

Mr. Vaneet Soni, Advocate, for the complainant.

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

Petitioners seek concession of pre-arrest bail in a case registered on the complaint of Lt. General Raj Kadyan claiming himself Chairman of Indian Ex-servicemen Movement, a registered society, under Section 420, 406, 34 IPC invoking the provisions of Section 156 (3) Cr.P.C.

The Judicial Magistrate Ist Class, Gurgaon vide order dated 17.03.2015 found that there was no ground to send complaint under Section 156 (3) Cr.P.C to SHO, however, the complaint was registered and order was passed for recording of the preliminary evidence on 09.04.2015. It appears that the complainant opted to file a revision petition before the Sessions Court against the order dated 17.03.2015. Learned Sessions Judge vide order dated 08.01.2016 not only set aside the order passed by the Magistrate but had also entrusted the complaint to Chief Judicial Magistrate, Gurgaon for disposal.

It appears that thereafter a direction was given for registration of FIR. The allegation against the petitioners is that without a valid authority, they had withdrawn the money from the account of abovesaid society.

Learned counsel for the complainant has intervened to oppose application for pre-arrest bail.

Learned State counsel has also opposed application for pre-arrest bail.

It is an admitted fact that during pendency of the present bail petition, the investigation had been completed and report under Section 173 (2) Cr.P.C has already been submitted in the Court of Illaqa Magistrate. Pursuant to the presentation of challan, the petitioners under the interim protection granted to them, have been appearing before the trial Court.

The nature of the allegations against the petitioners indicate that there is a controversy regarding the maintenance of finance of the society. The petitioners have allegedly embezzled the amount but on asking of the Court, learned counsel for the complainant informs that the amount had been re-deposited except for a sum of Rs.4 lacs.

Without entering into the controversy whether in the nature of the alleged economic offence committed by the petitioners, an inquiry was required to be conducted as per the judgment in **Lalita Kumari Vs. Govt. of U.P., and others 2014 (1) SCC Criminal 524** and without entering into the legality of the order passed under Section 156 (3) Cr.P.C in context to provisions of Section 263 Cr.P.C, it is sufficient to observe here that the

amount having already been re-deposited, sending of the petitioners behind bars during pendency of the trial as a matter of penalty is not warranted. It is not a case where custodial interrogation would serve any purpose.

Taking into consideration the totality of the above said circumstances and ratio of judgment of Supreme Court in **Arnesh Kumar Vs. State of Bihar, 2014 (8) SCC 273**, the petitioners who have been appearing before the Court of competent jurisdiction, can be granted the concession of pre-arrest bail.

The petition is allowed qua petitioners No. 1 and 2. It is ordered that petitioners No.1 and 2 will remain on bail against the bail bonds already furnished by them during pendency of the trial subject to the conditions that they will not absent themselves without any sufficient cause and will not in any manner hamper the further proceedings or delay the proceedings.

Petition qua petitioner No.3 stood already dismissed, he having been arrested in the case.

(M.M.S. BEDI)
JUDGE

November 17, 2016
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No