

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.M-14460 of 2017(O&M)

Date of Decision: June 01, 2017

Ratnesh Kumar son of Shri Ram NarainPetitioner

Versus

State of Punjab and anotherRespondents

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

Present: Mr.Arvind Moudgil, Advocate for the petitioner.

Nr,Varun Sharma, Assistant Advocate General, Punjab.

Mr.Sanjeev Sharma, Senior Advocate with
Mr.Shekhar Verma, Advocate for respondent No.2.

<><><>

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 438 of the Code of Criminal Procedure praying for grant of anticipatory bail to the petitioner in case FIR No.72 dated 15.3.2017, under Section 420 of the Indian Penal Code, registered at Police Station City, Barnala.

2. Briefly noticed, FIR came to be registered on the complaint of Mr.Lalit Kakkar, Vice President (Legal), Trident Limited, Barnala. It was asserted that on 5.4.2015, the petitioner had submitted an application to the Management of the Trident Group for the post of CEO in International Marketing Bed Linen of Corporate Division. The job in question was offered to the

petitioner vide letter dated 27.4.2015. Petitioner submitted his joining report, which was accepted by the Personnel and Administration Department on 20.8.2015. An agreement is also stated to have been executed by the petitioner on 20.8.2015 containing the detailed terms and conditions of service. As per Clause 2.2 of the agreement, the employee is barred from taking any papers/books/drawings/photographs/documents or any other property of the Company out of the premises without prior permission of the competent authority. Clause 2.26 of the agreement stipulated that in case any employee decides to leave employment of the Company, he/she shall hand over all the items/assets/records/files under his/her charge to the authorized person nominated by the employer and get a clearance certificate for the same. As per agreement, the employee was governed by the service rules of the Company and as amended from time to time. In the complaint, it has been asserted that the petitioner while holding the post of CEO and during the course of discharging his duties and responsibilities acquired confidential information about the working of the Company. He had access to the technology, pricing structure of the products, future planning, strategies and marketing intelligence of the Company. Petitioner had been provided and permitted to use E-Mail ID with external attachment rights, E-Mail sending rights to CEO and President E-Mail access on mobile, full internet access, window ID, VPN to work from home, USB access, Data card, access to view leads, opportunities and market intelligence. Such access as afore-noticed was with the rider that the petitioner shall not misuse the

same and shall not share such vital information with anybody else.

3. As per complaint, during the course of employment, the Company received copy of letter dated 23.9.2015 issued by Welspun Global Brands Limited i.e. the previous employer company and addressed to the petitioner as regards various illegal acts relating to down-loading of highly confidential and electronic data and information. Upon receiving such letter, the petitioner was called upon by the present employer to submit his comments. Written response was not forthcoming, but the petitioner orally informed that he was being victimized by the previous employer. Thereafter, a request was made by the petitioner to provide him financial aid so that he can defend himself in relation to the FIR which previous employer had got registered against him at Mumbai. It is alleged that under the garb of such request, a sum of ₹27,15,000/- had been advanced.

4. Allegations, in a nut-shell, are that with a dishonest intention, the petitioner has suddenly absented himself from duty w.e.f. 2.10.2016. An amount of ₹27,15,000/- has been mis-appropriated by way of dishonestly and fraudulently mis-representing and inducing the Management to lend him such amount. Further, there has been a theft of the data regarding future planning, strategy technology, business promotion, pricing of the product and marketing research of the Company and to which the petitioner was privy by virtue of the post that he had held.

5. Stand taken by the petitioner while seeking

anticipatory bail was that it is a case of false implication. The dispute, if any, is as regards settling of accounts. As per petitioner, his salary/remuneration has not been released by the employer and an amount of ₹84 lacs approximately is due from the Trident Group i.e. the employer. It was also the stand taken on behalf of the petitioner that the laptop of the petitioner is already in possession of the Company and as such, the allegations of theft of vital data and information is unfounded.

6. It would be apposite to take note that when this petition came up for preliminary hearing, learned counsel representing the petitioner had sought time to complete instructions with regard to the petitioner making available before the Investigating Agency, all the possible devices that could have been used for transmitting data against the backdrop of the allegations levelled against the petitioner. Accordingly, the matter was adjourned and arrest of the petitioner was stayed.

7. On 15.5.2017, a categoric stand was taken by learned counsel appearing for the petitioner that the petitioner would make available before the Investigating Agency all the devices including smart phone, Email account, Whatsapp account within a period of ten days.

8. Such stand was recorded by this Court in the light of order dated 15.5.2017 in the following terms:

"During the course of resumed hearing today counsel for the petitioner has taken a fair stand and states that he has instructions that the petitioner shall make available before the investigating agency all the

possible devices including smart phone, e-mail account as also whatsapp account, within a period of 10 days from today. Counsel further submits that the laptop is already in possession of the complainant-company.

List on 1.6.2017.

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

9. During the course of resumed hearing today, Mr.Varun Sharma, Assistant Advocate General, Punjab as also senior counsel representing the complainant-Company apprise the Court that the petitioner has not complied with the undertaking that had been recorded by this Court on 15.5.2017 and that he has not handed over the electronic devices as also the requisite details of accounts etc.

10. Learned counsel appearing for the petitioner today takes a stand that divulging the entire information as regards Email, Whatsapp account and making available to the Investigating Agency even his smart phone could work to his serious prejudice. It is re-iterated that the laptop is already in possession of the complainant-Company. Further contended that against the allegation of the petitioner having mis-appropriated ₹27 lacs approximately, it is the employer who owes to the petitioner a sum much in excess thereof.

11. Having heard learned counsel for the parties at length, this Court is of the considered view that the present petition merits dismissal.

12. The allegations against the petitioner are serious in

nature. Apart from the charge of mis-appropriation of a certain amount of money by fraudulently and dishonestly inducing the Management to lend him the amount in question, there is also the charge of criminal breach of trust and theft of vital information and data of the Company pertaining to pricing of the product/marketing research, future planning, strategy technology, business promotion.

13. Against the backdrop of the allegations, this Court was inclined to protect the petitioner subject to him co-operating in the matter and making available to the Investigating Agency the electronic devices and details of other means that could possibly be used for transmission of data/information. The undertaking/assurance to such effect was got recorded by the learned counsel representing the petitioner. Accordingly, the interim protection granted to the petitioner was extended and the matter was adjourned to today.

14. The petitioner has virtually resiled from the stand taken and recorded by this Court in the order dated 15.5.2017.

15. The petitioner has shown a clear intent not to co-operate in the matter and not to provide the Investigating Agency the relevant information. This Court would also be constrained to observe that the petitioner who is playing a game of hide and seek. The interim protection as regards stay of arrest was got extended from this Court on a firm and categorical assurance and undertaking of co-operating with the Investigating Agency. He has failed to do so.

16. Against the backdrop of the serious allegations and

looking towards the conduct of the petitioner, this Court is of the view that he is not entitled to the concession of pre-arrest bail.

17. Petition dismissed.

June 01, 2017
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note:

Whether speaking/reasoned?

Yes/No

Whether Reportable?

Yes/No