IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1)

Crl. Misc. No.M-22984 of 2017 (O&M)
Date of Decision: August 24, 2017.

Aditya Bansal

..........PETITIONER(s).

VERSUS

State of Haryana

........RESPONDENT(s).

(2)

Crl. Misc. No.M-8420 of 2017 (O&M)

Puneet Aggarwal

..........PETITIONER(s).

VERSUS

State of Haryana

........RESPONDENT(s).

(3)

Crl. Misc. No.M-17637 of 2017 (O&M)

Subham Goyal @ Shubham Goyal

..........PETITIONER(s).

VERSUS

State of Haryana

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.S. Khehar, Advocate
for the petitioner in CRM-M-22984-2017.

Mr. D.S. Matya, Advocate
for petitioner in CRM-M-8420-2017.

Mr. R.S. Cheema, Senior Advocate with
Mr. R.K. Trikha, Advocate
for the petitioner in CRM-M-17637-2017.

Ms. Harpreet Kaur, A.A.G. Haryana.

Mr. Gautam Dutt, Advocate
for the complainant.

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SURINDER GUPTA, J.(Oral)

All the three petitions captioned above are being taken up together for disposal as petitioners in all the three petitions have sought regular bail in case FIR No.97 dated 23.03.2016 registered for the offences punishable under Sections 406, 420, 467, 468, 471 read with Section 120-B of Indian Penal Code, at Police Station Sushant Lok, Gurgaon.

Complainant Atul Kapoor of M/s Kapsons Group, Sector-52, Wazirabad, District Gurgaon having one of its showroom at "Pearl Honda", Sector-52, Wazirabad, Gurgaon filed complaint to the police stating therein that their employees out of whom some have left the job and the remaining are still working in the cash/accounts division and accessories departments, have committed forgery, embezzlement, cheating, wrongful gain to themselves and wrongful loss to the company in active connivance with each other. During internal investigation, it came to the notice of company that these employees have forged and fabricated the ledger accounts/vouchers, bank accounts of the company and made transfer of money in their personal accounts or in the bank accounts of their relatives from the account of company. They made fictitious payments to various vendors without any valid bill.

Rajiv Gupta (non-applicant) was working as Vice-President

(Finance) and left the job in September, 2015 along with Shubham Goyal (petitioner) and one Ramesh Kumar. The complainant gave the instances of fraud, cheating and misappropriation in the complaint by quoting the instances which came to notice during internal investigation. It was also observed that the persons, who left the job along with the employees who are still in service had been releasing the cars without adequate sale consideration and in some cases where cheques of the customers were dishonoured, they purposely did not take action against those persons for dishonoured cheques nor deposit the cash amount received by them in the company's account. Shubham Goyal and his associates used to withdraw money in cash from the accounts of the company under 'Self Cheque' for registration of the vehicle sold by company and paid it to RTO or the person liasoning with RTO. After obtaining the registration, they used to take photocopy of receipt of registration along with calculation of the amount spent in registration of that particular vehicle and money to that extent used to be credited in the company account so that the money withdrawn from the account of the company tally with the receipt of registration expenses supplied by them. On checking of the accounts of Shubham Goyal and his team, the fraud came to notice. Initially, Shubham Goyal tried to hush up the matter pretending that receipts were missing and the account maintained by him in the computer can be tallied. When the accounts in the computer were checked, it did not tally, at which he got panicked. On inquiry, it was found that Shubham Goyal and his team had fabricated receipts which were shown to have been issued by RTO. It was found that money deposited with RTO was much less than the money shown in the receipts. The account in the computer were fudged. He requested the police to look into the entire fraud played with the complainant and take action against the guilty.

Petitioner Aditya Bansal (CRM-M-22984-2017) was arrested on 02.06.2016 and his application seeking regular bail was declined vide order dated 06.08.2016 by Additional Sessions Judge, Gurgaon. He then moved application for regular bail, which was dismissed by this Court vide order dated 19.12.2016 passed in CRM-M-35082-2016 (Annexure P-9). Now, he has filed this second application seeking regular bail.

Petitioner Shubham Goyal (CRM-M-17637-2017) was arrested on 09.06.2016. He also applied for regular bail, which was declined on 31.03.2017 by Additional Sessions Judge, Gurugram (Gurgaon).

Petitioner Puneet Aggarwal was arrested on 02.06.2016 and his application for regular bail was declined by Additional Sessions Judge, Gurugram (Gurgaon) on 31.01.2017.

Learned counsel for the petitioners have argued that admittedly the main accused in this case is Rajiv Gupta, who was allowed regular bail by Judicial Magistrate Ist Class, Gurugram vide order dated 01.09.2016. The bail allowed to Rajiv Gupta was cancelled by Additional Sessions Judge, Gurugram (Gurgaon) but that order has since been stayed by this Court vide order dated 10.11.2016 passed in CRM-M-37686 of 2016. The police after completion of investigation has presented the challan and charges have been framed. The entire case is based on documentary evidence which the petitioners cannot tamper with. Though the fraud of more than ₹15 crore was alleged but as per prosecution, it has been able to track fraud of about ₹3 crore. The petitioners are in custody for the last more than one year. The conclusion of trial will take considerably long time as it has been presented before the trial Court that the matter is still under investigation, the police may file supplementary challan on the basis of its further investigation.

Learned counsel for petitioner Aditya Bansal submits that his bail application was dismissed by Additional Sessions Judge, Gurgaon before the grant of bail to main accused Rajiv Gupta and thereafter by this Court in December, 2016. After dismissal of his first bail application, enough time has now elapsed and no headway has been made in the trial which is still at the initial stage. It has also been argued that co-accused Shikha, who has been attributed similar role, has been allowed anticipatory bail. There are no chances of tampering of prosecution evidence or prevailing on the prosecution witnesses, as they are official witnesses. No useful purpose will be served by keeping petitioner in custody.

Learned counsel for petitioner Puneet Aggarwal has argued that he was a driver of Shubham Goyal and not named in the FIR. The allegation that he was owner of company M/s P.S. Trading to whom the complainant company had made payment of about ₹6 lakh are baseless as in fact, this firm was floated by Rajiv Gupta, Aditya Bansal and petitioner Puneet Aggarwal had no dealing with that company.

Learned State counsel and learned counsel for the complainant have argued that it is a case where the employees of the complainant have committed fraud with the employer to the tune of ₹15 crores or so. This fraud came to the notice during special checking and by that time, Rajiv

Gupta and Shubham Goyal had left the job. The police has so far verified the fraud to the tune of ₹3 crores. The investigation is still in progress and after completion of the investigation, the police will produce supplementary challan.

On giving a careful thought to the submissions of learned counsel for the petitioners, learned State counsel and learned counsel for the complainant, I find that the entire case of the prosecution is based on documentary evidence. The allegations against the petitioners are that they have swindled the money of the complainant by transferring it in the accounts of various fake companies floated by them. The proving of such documents by calling the witnesses from various departments like bank, RTO Office, Registrar of Companies etc. will take considerable long time. As stated by learned State counsel, police is still investigating the matter and intends to file supplementary charge-sheet. If the same is filed along with more documents and list of witnesses, that will again add delay in conclusion of prosecution evidence. When the case is based on documentary evidence and statements of official witnesses, there are little chances of tampering with the evidence and prevailing upon the witnesses.

Keeping in view above facts, I am of the considered opinion that no useful purpose would be served by keeping the petitioners in custody, who are already under detention for the last more than one year.

As a sequel of my above discussions but without expressing any opinion on merits of the case, all the three petitions are allowed. Petitioners Aditya Bansal, Shubham Goyal and Puneet Aggarwal are ordered to be released on regular bail on furnishing bail bonds and surety bonds to the satisfaction of trial Court/Duty Magistrate, Gurugram (Gurgaon), subject to following terms:-

a. The petitioners shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
b. In the event of their absence on any date of hearing, the benefit of bail allowed to the petitioners shall stand withdrawn. The trial Court shall be competent to cancel their bail bonds and surety bonds and proceed to procure their presence in accordance with law. In that eventuality the petitioners shall have to apply for bail afresh.
c. They will not leave the country without the prior permission of the Court.

(SURINDER GUPTA)
JUDGE

August 24, 2017
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***