IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-23091 of 2017
Date of Decision: 26.10.2017

Vikas Kumar ....Petitioner

VERSUS

State of Haryana ....Respondent

2. CRM-M-17494 of 2017

Sushila ....Petitioner

VERSUS

State of Haryana ....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. V.K. Jindal, Sr. Advocate
with Mr. Akshay Jindal, Advocate
for the petitioners in both the petitions.

Mr. Deepak Grewal, DAG, Haryana.

Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Naveen Gupta, Advocate
for the complainant.

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<u>SURINDER GUPTA, J.(Oral)</u>

This is second bail application filed by petitioner-Vikas Kumar in CRM-M-23091-2017 and first application filed by petitioner-Sushila in CRM-M-17494-2017, seeking anticipatory bail in case FIR No.191 dated 11.04.2017 registered for offences punishable under Sections 384, 506, 420, 467, 471 and 120-B of Indian Penal Code (for short 'IPC'), at Police Station Gharaunda, District Karnal.

Heard.

First application filed by petitioner-Vikas Kumar in CRM-M-23091-2017 was got dismissed as withdrawn on 19.06.2017 with liberty to file fresh petition.

FIR was registered on the complaint of Anil Kumar son of Krishan Lal, wherein he has stated that he and his brother are owners of M/s Laxmi Auto Mobiles, Gharaunda, District Karnal and business of the firm was being looked after by Vikas Kumar and Satish Kumar. Both have embezzled amount of ₹3,12,00,000/- by forging signatures of complainant and his brother on cheques and various documents. In the agreement dated 24.12.2016, aforesaid accused have admitted the embezzlement. They also admitted that out of the embezzled amount they have withdrawn for payment of VAT a sum of ₹1,32,00,000/- but not deposited this amount in the account of Haryana Government. They have also not deposited amount collected from persons, who purchased motorcycles from the firm of complainant. On 18.03.2017, petitioners alongwith co-accused Satish Kumar, came in their car and threatened complainant not to demand the money otherwise they will finish his entire family or commit suicide and involve them in false cases.

Learned State counsel has argued that after registration of the case, co-accused, Satish who was arrested, has deposited ₹44 lacs out of the embezzled amount. Financers have also deposited ₹93 lacs in the account of firm of complainant. Petitioner-Vikas Kumar had admitted the embezzlement vide agreement dated 24.12.2016 (Annexure P-1), who has later not come forward to settle the dispute despite giving undertaking in this Court to this effect. Petitioner-Sushila had also accompanied the petitioner and co-accused-Satish Kumar, when threats were given to finish entire family of complainant. As per disclosure statement of petitioner-Vikas Kumar recorded by the police, a sum of ₹50 lacs out of embezzled amount, was paid to Sushila and a house was also purchased in her name from the embezzled amount.

Firstly, I take the allegations against petitioner-Sushila in CRM-M-17494-2017. From perusal of FIR, it appears that she was not an employee of complainant or directly involved in any embezzlement. If any house has been purchased by her husband in her name as alleged by learned counsel for petitioners, it does not disclose the commission of offence of embezzlement by her. The only allegation against her is that she had accompanied her husband on 18.03.2017, when threats were given to complainant to finish his family or to involve him in false case.

Keeping in view above facts, application (CRM-M-17494-2017) filed by Sushila is allowed and order dated 23.05.2017 is made absolute till the presentation of challan, subject to the following terms:-

(i) that the petitioner shall make herself available for interrogation by the police as and when required;

(ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against her so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that the petitioner shall not leave India without the prior permission of the Court.

(iv) that the petitioner will seek regular bail on the presentation of challan in Court.

Petitioner-Vikas Kumar was an employee of complainant. Vide agreement dated 24.12.2016, he had agreed to indemnify complainant for embezzlement committed by him. When the petition filed by petitioner-Vikas Kumar was taken up on 11.07.2017, the interim relief of anticipatory bail was allowed on the undertaking given by learned counsel for petitioner that the petitioner is ready to execute the sale deed of all of his properties as per terms of agreement dated 24.12.2016. Order dated 11.07.2017 passed in this petition is reproduced as follows:-

> *"Heard.*
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> *Learned counsel for the petitioner submits that three properties agreed to be sold by the petitioner vide agreement dated 24.12.2016 are worth more than ₹3 crores and petitioner is ready to execute the sale deed of all these properties as per terms of agreement in favour of complainant on any day he deem appropriate.*
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> *In view of submission of learned counsel for the petitioner, complainant Anil Kumar son of Krishan Lal be impleaded as respondent No.2. Registry will make necessary entry in the memo of parties in this respect.*
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> *Notice of motion for 31.08.2017.*
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> *In the meanwhile, petitioner is directed to surrender before the police and join investigation within two weeks. In the event of his arrest being required, he shall be released on interim bail till the next date, subject to his furnishing bonds to the satisfaction of Arresting Officer. However, he shall abide by the terms and conditions as envisaged under Section 438(2) (i) to (iv) Cr.P.C. failing which he shall loose the benefit of interim bail allowed to him.*
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> *It is, however, made clear that interim bail has been allowed keeping in view the offer made by learned counsel for*

the petitioner on instructions from the petitioner.”

It was on next date i.e 03.08.2017 that the petitioner retracted from his undertaking and order was passed as follows:-

> *“Learned counsel for the applicant-petitioner submits that he had made statement on 11.07.2017 that petitioner is ready to execute the sale deed of all these properties as per terms of agreement under bona fide mistake. The petitioner has conveyed that he denies the alleged agreement. Learned counsel for petitioner seeks withdrawal of submission made by him on 11.07.2017.*
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> *The interim relief was allowed to petitioner in view of submission of learned counsel for the petitioner that petitioner is ready to execute the sale deed of all these properties as per terms of agreement dated 24.12.2016. As learned counsel for the petitioner seeks withdrawal of his submission made on 11.07.2017, the interim relief allowed to petitioner vide order dated 11.07.2017 also stands withdrawn forthwith.*
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> *List on 31.08.2017, the date already fixed in main petition.”*

Even in the affidavit dated 27.12.2016, petitioner-Vikas Kumar and Satish have admitted that they were employed as Manager/Cashier of M/s Laxmi Auto Mobiles, Gharaunda and amount of ₹1,50,00,000/-, which was sale prices of motorcycles, was lying with them. Due to some reason they could not deposit in bank the sale proceeds of the month of October alongwith insurance and other amount lying with them.

Learned counsel for the petitioner has argued that sales of motorcycles by firm of complainant were made by accepting part of the sale prices and remaining sale amount was financed by different finance companies, which the petitioner could not embezzle. About the affidavit of petitioner and agreement he submits that petitioner will prove during trial that these were not given by him voluntarily.

On giving a careful thought to submissions of learned counsel for the petitioner and keeping in view the agreement and affidavit submitted by petitioner admitting his lapse coupled with undertaking given by learned counsel for the petitioner at the time of seeking interim relief, I find that at this stage, there is no reason to believe version of petitioner at its face value. Co-accused has deposited ₹44 lacs with the firm of complainant. If he had not embezzled any amount there was no reason for him to deposit such a huge amount and for complainant to admit his crime in affidavit and agreement dated 24.12.2016, which he was admitting till 11.07.2017, but later resiled.

Keeping in view the fact that petitioner has *prima facie* betrayed the employer and embezzled the sale proceeds and taxes payable by the firm and had also admitted his lapse through agreement and affidavit, which he has later on retracted, I find that his custodial interrogation is required to find the truth. Facts of the case does not call for exercise of discretionary power of this Court to extend benefit of anticipatory bail to petitioner-Vikas Kumar, as such, application (CRM-M-23091-2017) is dismissed being without merit.

October 26, 2017 **(SURINDER GUPTA)**
jk **JUDGE**

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