IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 38186 of 2016 (O&M)
Date of decision : 20.9.2017

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Krishan Kumar @ Tinku
................Petitioner

vs.

State of Punjab and another
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Abhinav Gupta, Advocate for the petitioner

Mr. K.S. Aulakh, Deputy Advocate General, Punjab.

Mr. Tarun Singla, Advocate for respondent No.2.

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H. S. Madaan, J. (Oral)

Krishan Kumar @ Tinku, an accused in FIR No.157 dated 14.7.2016 for offence under Section 420 IPC, registered with Police Station Kotwali, Bathinda, has filed the present petition for grant of pre-arrest bail.

Briefly stated, the facts of the case are that the FIR in this case was registered on the basis of written complaint submitted by complainant Pawan Kumar s/o Kasturi Lal r/o House No. C-16924, Street No. 7-B, Aggarwal Colony, Civil Lines, Bathinda, which he submitted to SSP Bathinda, inter alia contending that he was to recover Rs.10 lacs from Krishan Kumar @ Tinku s/o Rajinder Kumar r/o House No. 5295, Street No. 3, Malviya Nagar, Bathinda, who towards discharge of his financial liability had issued cheque No. 977700 drawn on Punjab National Bank, in the sum of Rs. 6 lacs in favour of the complainant. Subsequently such accused paid some amount to the complainant leaving balance of Rs.7,88,000/-. The accused had issued two cheques i.e. bearing Nos. 977720 drawn on Punjab National Bank, Bank Street, Bathinda and the other bearing No. 520616 drawn on Punjab and Sind Bank, Bathinda. According to the complainant, he had paid a sum of Rs.10 lacs to accused by borrowing the same from various persons i.e. Rs.6 lacs from Sita Ram @ Ram Kumar resident of Bathinda and Rs.4 lacs from Janak Raj s/o Hans Raj, r/o Maur Mandi. Subsequently, the accused asked the complainant that he is going to make payment of Rs.2,88,000/- to him and he would give fresh cheque of money amounting to Rs.5 lacs. The complainant believed him and went to house of the accused, but accused with a mala fide intention got the original cheque from the complainant and tore it away asking the complainant to go away and to do whatever he wanted to do. Thereafter, the complainant had been visiting the house of accused regularly, but accused did not make the payment, rather threatened to eliminate him and his family members and to get him involved in false criminal cases. Accordingly, FIR was registered. Feeling apprehensive of being arrested in the case, the petitioner had approached the Court of

Sessions for grant of pre-arrest bail, but his such request was declined by Additional Sessions Judge, Bathinda vide order dated 14.10.2016, as such the petitioner has approached this Court craving for grant of similar relief.

Notice of the petition was given to the State, which has appeared through its counsel.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record and I find that the petition is bound to fail.

It has to be taken note of that in interim order dated 22.10.2016, the contention of learned counsel for the petitioner has been recorded to the effect that legal notice was issued by the complainant to the accused on 29.7.2015. Thereafter, the petitioner had made the entire payment to the complainant. Keeping in view that contention, notice of motion had been ordered to be issued as regards this petition. This very contention is recorded in interim order dated 27.3.2017 with the additional lines directing the counsel for the petitioner to place on record the requisite documents in support of his assertion that petitioner had made the entire payment to the complainant, after receipt of legal notice dated 29.7.2015. However, no such document has been placed on the file by the petitioner till date. Though learned counsel for the petitioner has placed on record copy of the bank statement to show that he had withdrawn an amount of Rs. 9 lacs, around that very time, when notice is said to have been served by the complainant upon the accused, but that statement of account does not goes to show that money had in fact been paid to the complainant. The accused might have withdrawn any amount of money from his bank account but the contention regarding its payment to the complainant can be pleaded only if some document in the form of receipt etc. is there. The statement of account relates to Shubham Rice and General Mills and not to the personal account of the petitioner- accused. Thus it comes out that this contention put forward was not correct. If the payment had been made, some documentary proof thereof ought to have been there. By coming up with a plea that after receipt of notice the entire payment has been made, goes to show that the petitioner admits the liability to make the payment to the complainant, otherwise he would not have claimed that he had paid dues after receipt of notice served upon him by the complainant.

According to the State counsel, though the petitioner has joined the investigation, but has not rendered full cooperation. It being so, custodial interrogation of the petitioner is found to be essential for complete and effective investigation and to unfold the entire story. If custodial interrogation is denied to the investigating agency, that shall adversely effect the investigation, which is uncalled for. In the case of ***State represented by the C.B.I. vs. Anil Sharma 1997 (4) RCR (Criminal) 268***, the Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is on anticipatory bail and further in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Thus finding no merit in the petition, the same stands dismissed.

(H.S. Madaan)
Judge

20.9.2017
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No