IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No.M-37990 of 2017 (O&M)
Date of Decision:22.12.2017

R.K.Aggarwal

... Petitioner

Versus

U.T., Chandigarh

... Respondent

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

Present:- Mr. J.S.Bedi, Senior Advocate with
Mr. Vishal Aggarwal, Advocate,
for the petitioner.

Mr. Sukant Gupta, A.P.P.U.T., Chandigarh.

Mr. Gurminder Singh, Senior Advocate with
Mr. Keshav Gupta, Advocate,
for the complainant.

TEJINDER SINGH DHINDSA, J.

Prayer in this petition is to release the petitioner on regular bail in case FIR No.51 dated 14.03.2014, under Section 420 IPC, registered at Police Station North, Sector-3, Chandigarh.

Briefly it may be noticed that the FIR came to be registered on the statement of Sh. Kewal Garg. As per complainant, an amount in excess of Rs.10 crores was invested with Shalimar Estates Private Limited (hereinafter to be referred to as the Company), during the period of 2006-2009 and in which the present petitioner was a Managing Director. An MOU (memorandum of understanding) was stated to have been executed on 10.06.2013 between the parties and it was mutually agreed that Sh. Kewal Garg as also his family members would be entitled to one third share in the income of the Company as also from the sale proceeds of the commercial space in a shopping mall. Further complainant asserted that a joint bank account was to be opened and the income from the shopping mall with effect from the date of execution of the MOU i.e. 10.06.2013 was to be deposited in such account and which was to be operated jointly under the signatures of Sh. Kewal Garg and as also the accused/present petitioner. The principal accusation against the petitioner is that a resolution dated 29.10.2013 was subsequently passed fraudulently and on the strength of which the petitioner was authorized to operate the account in question all by himself and even a fresh cheque-book was got issued. It was alleged that based upon such fraudulent resolution dated 29.10.2013 petitioner has unauthorizedly operated the joint account and has embezzled huge sums of money.

Petitioner was arrested on 14.03.2014. Investigation having been completed, challan was presented on 12.05.2014.

Petitioner earlier filed CRM No.M-15570 of 2014 seeking concession of regular bail and which was allowed by this Court in terms of order dated 20.05.2014.

Petitioner having evaded the trial proceedings was declared a proclaimed offender on 28.09.2016. An application preferred by the petitioner seeking regular bail stands rejected vide order dated 28.09.2017 (Annexure P-20) passed by the learned Additional Sessions Judge, Chandigarh.

It is against such factual backdrop that the second petition under Section 439 Cr.P.C. seeking regular bail has been preferred before this Court.

Learned counsel representing the petitioner would submit that the petitioner after grant of concession of bail by this Court had duly appeared before the trial Court but however, there was a turn of events inasmuch as litigation arose qua another mall being built by the Company in Mohali and which could not be completed on account of certain unavoidable circumstances. Consequently, the allottees in the said mall filed consumer complaints against the Company as well as the petitioner. Awards were passed against the petitioner and who then engaged in the process of selling properties owned by the Company to repay the allottees. It is sought to be contended that it is under such peculiar circumstances that the petitioner had to go in hiding to avoid arrest. Counsel further adverts to the orders placed on record at Annexure P-23 (colly.) passed by the National Consumer Disputes Redressal Commission, New Delhi to assert that settlement was arrived at with the allottees and taking cognizance of the same, the National Consumer Disputes Redressal Commission has modified the orders passed by the State Commission in execution proceedings and the orders of arrest of the petitioner were set aside. While pressing for grant of bail, it is submitted that the petitioner was arrested on 30.10.2016 in a different FIR and subsequently brought on production warrants in the present FIR on 22.11.2016. It is argued that the petitioner has now faced incarceration for a period of more than 01 year. Counsel would also make an attempt to impress upon this Court that the petitioner having been arrested, the order dated 28.09.2016 declaring him as a proclaimed offender would cease to operate.

Prayer for bail has been vehemently opposed by learned counsel representing U.T., Chandigarh. It is submitted that the petitioner has misused the concession of bail that had been granted. In spite of numerous opportunities having been granted by the trial Court, petitioner did not cooperate in the proceedings and numerous applications were filed seeking exemption from personal appearance. Thereafter, due procedure was followed and the trial Court declared him as a proclaimed offender. It is urged that the conduct of the petitioner is such that he is not entitled to the concession of bail.

Counsel appearing for the complainant has also opposed the grant of bail on the same lines and has reiterated the submissions advanced on behalf of U.T., Chandigarh. Detailed and lengthy submissions were advanced in an attempt to demonstrate to this Court that even after grant of concession of bail by this Court vide order dated 20.05.2014, the petitioner/accused has failed to discharge his obligations as per terms and conditions of the MOU executed on 10.06.2013.

Counsel for the parties have been heard at length.

It has gone uncontroverted that the complainant Sh. Kewal Garg as also his family members had already instituted a suit for declaring the subsequent resolution dated 29.10.2013 as null and void and had prayed for grant of an injunction to restrain the petitioner from operating the account in question i.e. the Account Number 250000209999 at Indusind Bank, Sector 8-C, Chandigarh. Such suit was instituted in November, 2013 i.e. almost 04 months prior to the registration of the FIR. Subject matter of the accusation/allegations contained in the FIR as such are a subject matter of adjudication in civil proceedings that already stand initiated. It is also not in dispute that an application moved under Order 39 Rule 1 and 2 CPC by the complainant seeking a restraint against the petitioner to operate the account in question has been dismissed and such order of dismissal has been affirmed in an appeal preferred.

Dispute between the parties is essentially civil in nature. This Court would refrain from passing any observations with regard to the rights and obligations flowing from the memorandum of understanding dated 10.06.2013 lest the same may influence proceedings taken out by either party in relation thereto.

Conduct of the petitioner after grant of bail by this Court on 20.05.2014 has not been above board as would be discernible from the proceedings leading to his being declared a proclaimed offender.

Be that as it may petitioner has now faced incarceration in the present case since 22.11.2016 i.e. for a period of one year and one month.

Investigation having been completed, challan had been presented on 12.05.2014. Trial would take time to conclude.

In the totality of the circumstances and without making any observations on merits, petition is allowed.

Petitioner is directed to be released on bail to the satisfaction of the trial Court/Duty Magistrate. However, having regard to the past conduct of the petitioner and that he had been declared a proclaimed offender, trial Court will ensure that the petitioner is released on bail on furnishing adequate bail bonds and at least two sureties of the like amount apart from imposing other stringent conditions so that the possibility of the petitioner absconding from trial is ruled out.

Liberty is also granted to the prosecution/complainant to move an appropriate application for recalling of this order upon showing that the petitioner has made any attempt to evade trial proceedings or has interfered in the course of a fair and unhampered trial.

Petition allowed.

22.12.2017 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes

Whether Reportable Yes