**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No.M-45531 of 2016 (O&M)
Date of Decision: November 14, 2017**

Ms. Kritika Tripathy

......PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gautam Dutt, Advocate
for the petitioner (s).

Mr. Deepak Grewal, D.A.G. Haryana.

Mr. Rohit Sud, Advocate
for the complainant.

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SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure (for short-Cr.P.C.) for grant of anticipatory bail to the petitioner in case FIR No.684 dated 05.09.2016 registered for offence punishable under Section 408 of Indian Penal Code, at Police Station DLF Sector-29, District Gurgaon.

Heard.

Petitioner was employed as Assistant Clinic Manager and posted at Kaya Skin Clinic at Shop No.99 Second Floor, DLF, Galleria Market, Gurgaon in March, 2015, where she remained posted up to December, 2015 and looking after the accounts and management of the clinic along with Ms. Manpreet (CEE) and Ms. Vungzamawi Valte (CCE).

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She was supervised by her manager Tanya Pandey, Area Manager. During the routine audit, which was carried every year in November-December, various financial irregularities/discrepancies regarding mismanagement of account of the clinic during period from April to December, 2015 were pointed out. A detailed audit inspection was got conducted and the Auditor in the report dated 07.04.2016 pointed out that during this period business of ₹2.20 Crores was carried out by the clinic but an amount of ₹1.05 Crore was transferred and reflected in the company's accounts and remaining amount of ₹1.05 Crores was illegally, dishonestly and clandestinely misappropriated by the petitioner and her co-accused. During inquiry, it came to the knowledge of the complainant that all the accused cheated and defrauded the company in connivance with each other by raising forged and fabricated bills and by making false entries in the account books. On 22.01.2016, official of the company visited the clinic and confronted the petitioner regarding her acts of cheating and misappropriation of the company's funds. She confessed her guilt and apologised for her misdemeanour and also agreed to return the money she had cheated by raising fabricated bills and requested the company not to report the matter to the police as it will cause a lot of humiliation to her. She issued a cheque bearing No.871069 dated 22.01.2016 drawn on ICICI Bank in favour complainant-company to show her bona fide but the cheque when presented to the bank, was dishonoured.

As per complainant, the modus operandi adopted by the petitioner and her co-accused to cheat and defraud the company was as follows:-

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- *"Misappropriation and siphoning of the payments received from clients in cash by raising fictitious bills of the services opted by the clients. Complimentary sessions were offered to client and family members and the same are not accounted. Issuing manual bills in the name of Kaya Ltd. on the false pretext that computerised billing is not functioning and usurping the same without crediting it in the account of Kaya Ltd. Misusing the products and services of the company without any authority/approval from management for illegal and unlawful gains and benefits thereby resulted in over-use of the products in comparison to the services offered to the clients. Non maintaining and non-submission of the records books of the said clinic including manual bill books, credit card reconciliation book along with credit card transactions charge slips. The abovementioned illegal acts of the accused were carried out in the following manner:*
- *Deliberately entering incorrect modes of payment; the accused employees were entering the incorrect mode of payments, as if the client was paying in cash for the services opted by them, the accused employee used to show credit card entry in their billing system by entering a false/fake credit card approval code and the cash paid by the client was siphoned off by the accused employee.*
- *Deliberately entering incorrect payment entries of the services consumed by customers. The accused employees were continuously entering wrong billing amounts in the computer system as against the amount actually received from the clients for the services opted.*
- *The accused employees in order to cheat and defraud*

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our company, were entering less amounts as against the amount received from clients for the services taken by them so as to make unlawful and illegal gains at the cost of our company.

- *Deliberately entering fake approval codes of banking transaction. The accused employees were also entering incorrect and fake approval code so as to cheat our company and siphon off the money for their own benefit.*
- *Deliberately entering incorrect figures of the consumption of stock of the said clinic which including medicines, beauty products etc."*

Learned counsel for the petitioner has argued that petitioner had left the company in November, 2015 and joined its competitor VLCC in December, 2015. The problem arose when the petitioner had joined the competitor company of complainant. Her resignation was also accepted on 31.12.2015 and all her dues were cleared. The allegation of forgery, if any, are based on documentary evidence for which custodial interrogation of the petitioner is not required.

Learned State counsel assisted by learned counsel for the complainant has argued that it is a case where the employes have cheated the employer and custodial interrogation of the petitioner is most required in the facts and circumstances of the case. The petitioner had adopted innovative methods to cheat the complainant. Investigating Officer has recorded statements of three witnesses, who have stated that they have made the payment to the petitioner after visiting the clinic but no bills were issued by her. One Ms. Sonali, whose statement has been recorded under Section 161 Cr.P.C., has stated that she made payment in cash to the petitioner. She

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did not possess any credit card but on perusal of the documents, it was found that payment made by her and other witnesses have not been accounted for, rather in the bill prepared for Ms. Sonali, the payment has been shown to have been made through credit card. The accused have adopted wrongful methods to cheat the company by showing incorrect payment mode or showing paid service as complimentary. They were not depositing the cash payment received by them in the account of complainant company. Some of the payments were made through credit cards, which were not even cleared as there was either no balance or the receipts generated were not available in the record of the company. The complainant, in her confessional statement dated 22.01.2016, has admitted that she is ready to return the incentive amount received through fake billing done at the clinic of the complainant during her posting there. A cheque of ₹80,000/- was also given by her against the claim of cash billing made in the clinic of complainant. A legal notice was also given to her narrating all the facts regarding embezzlement done by her, which she never replied, rather issued cheques of ₹80,000/- and ₹15,000/- after the legal notice.

Learned counsel for the complainant has drawn my attention towards bank record, which shows that the amount of several bills of which payment was made to have been shown by credit cards, has not been received. In some cases, credit card were having short deposits. He has also pointed out towards receipts issued to the customers who have made payments in cash but the payment has been shown through credit card which were also not received in the account of the company. He submits that the police has collected the record of the payment through credit cards

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which is to be confronted to the petitioner. The auditor in his report has made observations as follows:-

Sr. No.	Observations	Report (Ref.No.)	Annexure
1.	It was observed that card collection of INR 1.03 crore was not traceable in banks against total collection of INR.1.84 crore. Based on our experience & circumstances in current audit, we suspect that those invoices would have been collected in cash while recorded as credit card settlement.	1	Annexure_1.xls
2.	It was observed that cash collection of INR.2.60 lacs was not traceable in banks against total collections of INR 31.53 lacs.	2	Annexure_1A.xls
3.	We observed that, uptill 10th September, 2015, invoices were generated under the common user login ID and password of system, subsequently each staff was given their individual/distinct system credentials (user name and password). Out of total card collection of INR 1.03 crore not traceable in bank. INR 57.24 lakhs were billed under common ID, INR 21.66 lakhs were billed under employee Ms. Kritika Tripathy ID & INR 23.62 lakhs were billed under employee Ms. Vungzamawi Valte. While reviewing the billing transactions, we came across the fact that almost all the bills after 10th September 2015, were raised either by Ms. Kritika Tripathy or Ms. Vungzamawi Valte. Hence, we fairly suspect that the bills raised before this period would also been raised by them only.	1	Annexure_2.xls
4.	While reviewing billing transactions from the system, we observed that invoices amounting to INR 1,64,781/- were raised in the name of employee Ms. Kritika Tripathy (as customer) out of which INR38,533/- was not traceable in bank. Further invoices of INR 91,247/- were raised in the name of employee Manpreet Kaur (as customer) out of which INR 19,035/- was not traceable in bank. Though an employee can take the services/product as customer and also avail the discount schemes offered, however, the frequency at which the services is being availed raises a suspicion. Further, the aforementioned amount has also not been collected. That clearly reflects that they has mis-utilised the services and products on offer.	1	Annexure _3.xls

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Sr. No.	Observations	Report (Ref.No.)	Annexure
5.	As standard process, all the clinic are expected to send credit card charge slip and manual invoice books at the month end to HO for verification. As per discussion with Kaya Team Mumbai & mails send by HO to clinic, it was observed that charge slip books were not sent by Clinic to HO for verification. Further these documents are majorly not available at the clinic. These documents were the original and source to trace the collection claims which are not received in bank.	1	
6.	For cases where collections were not traceable in bank, it was observed that 1,879 sessions were consumed against 4,778 sessions created in system. This may result into revenue loss for consumables used & incentives paid to employees for sessions consumed in system.	1	Annexure_4.xls
7.	As per verification of sample cases of Therapy record sheet, it was observed that services were consumed in TRS but not consumed in system. We fairly suspect that unauthorized complimentary services were provided to clients to get business or money collected in cash but not recorded in system.	3	Annexure_5.xls
8.	As per discussion with Kaya team Mumbai, it was observed that out of 2 Manual Bill Books were sent to Clinic, however only 1 manual billing book was provided by clinic staff for verification at clinic. Further in 1 case Manual Bill found in MMS but no matching with billing in MMS,	4	Annexure _6.xls

Report of the Auditor shows that out of the total card collection of ₹1.03 crore, which is not traceable in accounts of the company, ₹21.66 lacs were billed under the ID of petitioner.

On giving a careful thought to the submission of learned counsel for the petitioner, learned State counsel and learned counsel for the complainant and going through the paper book which contain reply and documents placed on file, I find that during a short period of about 7-8 months, a fraud of more than ₹1 crore has been played with the complainant. In the report of Auditor, this fact has specifically come that an amount of

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₹21.66 lakh has been withdrawn by using the ID of the petitioner. To look into all these aspects, I am of the considered opinion that custodial interrogation of the petitioner is required. Even otherwise, keeping in view the facts and circumstances of the case and conduct of the petitioner, I do not find it to be a fit case to exercise the discretionary power of this Court to extend the benefit of anticipatory bail to the petitioner.

This petition has no merits. Dismissed.

(SURINDER GUPTA)
November 14, 2017 **JUDGE**
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Whether speaking/reasoned: ***Yes/No***

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

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