

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-15796 of 2017
Date of Decision: 24.05.2018

Surender Goyal and anotherPetitioners

VERSUS

State of HayanaRespondent

2. CRM-M-33494 of 2017

NeerajPetitioner

VERSUS

State of HayanaRespondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. U.K. Agnihotri, Advocate
for petitioners in CRM-M-15796-2017.

Mr. Shalender Mohan, Advocate
for the petitioner in CRM-M-33494-2017.

Mr. Deepak Grewal, DAG, Haryana.

Mr. J.S. Hooda, Advocate
for the complainant.

SURINDER GUPTA, J.

Present petitions have been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to petitioners in case FIR No. 95 dated 28.03.2017 registered for offences punishable under Sections 420, 406, 120-B and 506 of Indian Penal Code, at Police Station Old Faridabad, District Faridabad.

Heard.

Petitioners have joined the investigation.

Learned State counsel submits that as per version of

complainant, recovery of amount paid to petitioners is to be effected from them for which their custodial interrogation is required.

It is admitted case that police has registered FIR No. 38 dated 17.01.2017 on the complaint of petitioner no. 2-Rohit Goyal (in CRM-M-15796-2017) and the police after completion of investigation in that case has presented the challan in Court against four persons including petitioner-Neeraj in CRM-M-33494-2017. This matter was considered and following order was passed on 20.11.2017:-

“ Heard.

Learned State counsel submits that FIR No. 38 dated 17.01.2017 was registered at Police Station Faridabad Central. That FIR was registered on the complaint of petitioner no. 2 and the police after completion of investigation has presented the challan in Court against four persons including petitioner-Neeraj (in CRM-M-33494-2017). Allegations in that FIR and in this FIR overlap. Complainant has alleged that he paid ₹12 lacs to Gulshan and Surinder. As per FIR No. 38 dated 17.01.2017, amount collected by various persons amounting to ₹44 lacs was paid to Neeraj, Aryan son of Shiv Hari, Gaurav and Harshit. However, in police investigation, Harshit was found innocent. The police has presented the challan against Neeraj, Gaurav, Aryan @ Vikas, Aryan son of Shiv Hari.

On perusal of both the FIRs, I find that allegations levelled in FIR No. 38 are also part of allegations in this FIR. The police has believed the version of petitioner no. 2-Rohit

Goyal in CRM-M-15796-2017 and filed the challan. Now the question before the investigation officer is as to what will be the effect of filing of challan in case bearing FIR no. 38 dated 17.01.2017 on the present case.

Learned counsel for complainant submits that complainant-Jagbir had moved the complaint prior to registration of FIR No. 38 dated 17.01.2017.

Learned counsel for petitioners submits that petitioners admit contribution of complainant in the amount of ₹44 lacs paid to Neeraj and others. Petitioners have not committed any crime but are victims at the hands of Neeraj and others. They have filed complaint against accused on the basis of which FIR no. 38 dated 17.01.2017 was registered prior to the complaint in this case.

Keeping in view above facts, Commissioner of Police, Faridabad is directed to entrust the investigation of this FIR to a police officer not below the rank of Deputy Commissioner of Police, who will also look into the registration of FIR No. 38 dated 17.01.2017 at Police Station Faridabad Central, challan filed in that case and submit report on next date.

List on 23.01.2018.

Interim order to continue.”

Learned State counsel submits that FIR No. 38 dated 17.01.2017 was not rightly investigated by the police and this fact is being considered by higher police authorities.

Petitioners have come up with their own version regarding the

incident and are not denying contribution of ₹44 lakhs for purchase of gold by complainant. Challan presented in case bearing FIR No. 38 dated 17.01.2017, registered at Police Station Faridabad Central, is already before the Court. Correctness of version of complainant in that case will be determined by the Court during trial and at this stage this argument is not available to learned State counsel that investigation in that case was not proper.

Keeping in view above facts and circumstances but without expressing any opinion on the merits of the case, these petitions are allowed and orders dated 05.05.2017 passed in CRM-M-15796-2017 and 11.09.2017 passed in CRM-M-33494-2017 are made absolute till the presentation of challan, subject to the following terms:-

- (i) that petitioners shall make themselves available for interrogation by the police as and when required;
- (ii) that petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) that petitioners shall not leave India without the prior permission of the Court.
- (iv) that petitioners will seek regular bail on the presentation of challan in Court.

May 24, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No