

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-24935 of 2018

Date of Decision: July 04, 2018

Preet Kalsi

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. S.S. Mor, Advocate
for the petitioner

Mr. D.R. Singla, DAG Haryana

Mr. Bhupender Singh Ghangas, Advocate
for the complainant

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Sudhir Mittal, J. (Oral)

The present petition has been filed for grant of anticipatory bail to the petitioner in case FIR No. 71 dated 22.05.2018, registered under Sections 406, 420, 120-B IPC at Police Station Sector 20, Panchkula, District Panchkular.

2. The FIR has been annexed as Annexure P-1. The perusal of the same shows that allegations against the petitioner are that she alongwith her husband took friendly loans from various persons with the promise to repay the same within a short time alongwith interest. However, the money was not repaid. The cheques were issued by the husband of the petitioner from time to time but all of them were dishonoured. It is further stated that the petitioner and her husband have defrauded number of financial institutions by taking loans against various properties and that number of criminal cases are pending against the husband of the petitioner. It is also mentioned in the FIR that the petitioner and her husband are very charming

personalities and they use their charm to befriend innocent members of the public and then defraud them of their money.

3. Learned counsel for the petitioner submits that the money paid by the complainants was by way of cheques issued in the name of the husband of the petitioner and that money has not been paid to the petitioner. Moreover, for dishonour of the cheques issued by him, resort has been taken to proceedings under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') and, therefore, registration of an FIR under Sections 406/420 IPC is a misuse of the process of law. It is also submitted that a civil dispute has been given the colour of criminal case and, thus, the petitioner is entitled to the grant of anticipatory bail. Reliance is placed upon judgment of Hon'ble Supreme Court dated 28.01.2000 passed in ***G. Sagar Suri and another vs. State of U.P. and others, Appeal (Crl.) 91 of 2000*** as well as order dated 20.06.2018 passed in CRM-M-26033 of 2018 titled as ***Jaswinder Singh and another vs. State of Haryana.***

4. The plea of anticipatory bail is opposed by learned State counsel as well as counsel appearing for the complainants. Learned State counsel submits that Bank of India has issued legal notices to the petitioner as well for defrauding it by obtaining loan against properties. Another FIR No. 98 dated 15.06.2018 has also been registered against the petitioner under Sections 420, 120-B IPC at Police Station Abohar. It is further submitted that ICICI Bank, Patiala has provided information to the police that the money paid by the complainants was deposited in a joint account owned by the petitioner as well as her husband. Recovery of huge amount of money is to be made from the petitioner as well and, therefore, her custodial interrogation is necessary.

5. The question is whether the petitioner is entitled to grant of discretionary relief of anticipatory bail considering the facts and circumstances of

6. The allegations in the FIR show that the petitioner and her husband induced the complainants to lend them money on the promise that the same would be returned within a short time alongwith interest. The money was actually paid and was deposited in the joint account. Subsequently, cheques were issued for return of the friendly loans but none of the cheques were ever honoured. More than one such instance has been referred to in the FIR. Under the circumstances, inescapable conclusion is that members of the public were induced to part with property, which was infact parted with and loss was caused to them. Criminal intent is writ large. The money so obtained, has been used by the petitioner and her husband for their personal gain and, thus, the trust reposed in them has been violated. Thus, it can not be said that a pure civil liability is involved and that a civil case has been converted into a criminal one. The contention of learned counsel for the petitioner that no money has been received by the petitioner is belied by information supplied by ICICI Bank, Sector-20, Panchkula, which shows that the money was deposited in a joint account. For dishonour of cheques issued by the complainants, the complainants are entitled to invoke the provision of Section 138 of the Act but that does not prevent them from registering a case under Section 406, 420, 120-B IPC against the petitioner and her husband, if the circumstances of the case so require. The ratio of *G. Sagar's case (supra)* is not attracted in this case for the simple reason that in that case a financial institution had extended a loan to the accused on the request of the accused and for re-payment thereof cheques had been issued which were dishonoured. The complainants in the present case are not financiers and the perusal of the FIR clearly shows that they were duped by the petitioner and her husband by first befriending them and then taking friendly loans from them with the intention of never repaying the same. It is settled law that in respect of the same facts, civil as well criminal proceedings can continue simultaneously. Moreover, adoption of recourse to Section 138 of the Act does

not bar adoption of recourse to any other criminal case if the circumstances of the case so require. The order dated 20.06.2018 passed in CRM-M-26033-2018 also does not advance the case of the petitioner as in that case it has been found that pure and simple civil transaction has been converted into a criminal one whereas I have already found hereinabove that this is not a pure civil transaction.

7. For the reasons aforementioned, I do not find any merit in the petition and the same is accordingly, dismissed. The observations made hereinabove are purely for the purpose of deciding this petition and shall have no bearing on the merits of this case.

July 04, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No