IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.2706 of 2018 (O&M)
Date of Decision: 14.02.2018

Anil Sharma

......Petitioner

Vs

State of Haryana

.....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Rajat Gautam, Advocate
for the petitioner.

Ms. Neelam Kashyap, D.A.G., Haryana.

Mr. Shiv Kumar, Advocate
for the complainant.

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RAJ MOHAN SINGH, J.

Petitioner has prayed for grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.425 dated 26.05.2017, registered under Sections 406, 419, 420, 467, 506, 120-B IPC at Police Station Saran Distt. Faridabad.

Allegations against the petitioner are that he facilitated the complainant for obtaining loan of Rs.1 crore for purchasing flour mill through his known Bank Manager of Oriental Bank of Commerce. At the time of advancement of loan, Bank Manager and the petitioner took six blank cheque Nos.269202 to 269207 drawn on loan account of M/s Sunahari Flour Mill as security with the Bank. Cheque No.269202 dated 27.06.2016 in a sum of Rs.40 lakhs and cheque No.269207 dated 27.06.2016 in a sum of Rs.25,20,125/- were transferred in the account of M/s Indraj Singh & Sons, Proprietors Sahil Aggarwal account No.915020002697289 in the Axis Bank. Thereafter the petitioner in alleged conspiracy with the aforesaid Sahil Aggarwal took the said amount from him after paying him commission of Rs.5 Lakhs.

It was further alleged that cheque no.269204 dated 28.06.2016 in a sum of Rs.15 Lakhs was used in favour of M/s Jai Balaji Engineering Works. The said firm was opened by the petitioner in the name of his tenant Deepak Wadhwa at his own residential address. Petitioner withdrew the amount of Rs.15 Lakhs on the same day after obtaining cheque from Deepak Wadhwa. Similarly cheque No.269207 dated 30.06.2016 in a sum of Rs.38,57,866/- was used in favour of M/s IRA Foods INC which was opened by the petitioner in the name of his tenant Ashish Verma. The said amount was encashed from account no.661305500596. Thereafter amount of Rs.38,57,866/- was got transferred by the petitioner in the name of another accused Amit Bhatia through RTGS for clearing housing loan of Amit Bhatia. The petitioner got sale deed of the house of Amit Bhatia redeemed and took loan of Rs.40 Lakhs. Cheque No.269206 dated 30.06.2016 was used by the petitioner for transferring a sum of Rs.80,000/- in the name of his employee Vinod and he used cheque No.269205 dated 13.07.2016 for withdrawing Rs.5 Lakhs in his own name.

In the aforesaid manner, the amount sanctioned towards loan of the complainant was allegedly misutilized through the cheques in question by the petitioner.

Learned counsel for the petitioner submitted that the allegations against the petitioner are subject matter of documentary evidence and the police has collected the material documents and challan has been presented. Petitioner is in judicial custody and is no more required in any further investigation of the case. Offence is triable by the Magistrate and no *bona fide* purpose would be served by keeping the petitioner in custody.

Learned counsel by relying upon ***Sanjay Chandra and Vinod Goenka vs. Central Bureau of Investigation, 2011(4) R.C.R. Criminal) 898*** contended that in case of economic offences of huge magnitude causing loss to the State Exchequer after investigation and filing of chargesheet, regular bail can be granted to the accused, as bail is the Rule and committal to jail is an exception. Refusal of bail is a restriction of personal liberty of an individual which has been guaranteed under Article 21 of the Constitution of India.

Learned counsel also relied upon ***Babba vs. State of Maharashtra, (2005) 11 SCC 569*** and ***Siddharam Satlingappa Mhetre vs. State of Maharashtra, 2011(1) R.C.R. (Criminal) 126***.

On the other hand, learned State counsel duly assisted by learned counsel for the complainant vehemently opposed the prayer of petitioner for the grant of regular bail on the ground that huge amount has been siphoned off by the petitioner by way of cheating and forgery. Petitioner is also involved in number of similar cases and in case of grant of bail to the petitioner, he may cause hindrance in the investigation *qua* other accused, who have not been arrested so far.

Learned counsel for the complainant submitted that the petitioner is also involved in the cases bearing FIR No.1015 dated 28.10.2017, FIR No.722 dated 08.08.2017 registered at Police Station Saran and FIR No.481 dated 14.09.2017 registered at Police Station Kotwali, District Faridabad. The antecedent behaviour of criminal activity of the petitioner would disentitle him from claiming concession of bail as he would interfere with the trial and tamper with the evidence.

As against this, learned counsel for the petitioner reiterated his earlier stand and further submitted that in FIR No.1015 dated 28.10.2017, petitioner has not even been arrested. In FIR No.481 dated 14.09.2017, a compromise has been effected between Ashok Bansal-complainant and the petitioner on 25.01.2018. In FIR No.722 dated 08.08.2017 registered under Sections 406, 420, 467, 468, 471, 506, 120-B IPC at Police Station Saran Faridabad, the petitioner has been granted regular bail by the Addl. Sessions Judge, Faridabad on 02.02.2018.

I have heard the submissions made by learned counsel for the parties.

Evidently, the allegations against the petitioner are based on documentary evidence. The admissibility and veracity of which would be tested by the trial Court during trial. The offences are triable by the Magistrate and the challan against the petitioner has already been filed in the Court. The complicity of the petitioner in terms of his antecedent behaviour would be tested by the trial Court during trial. Petitioner is in judicial custody since 24.10.2017 and is no more required in any further investigation of the case. Arrest of other co-accused and submission of final report against them would not be dependent upon the custody of the petitioner.

At this stage, without adverting to the merits of the case, I am of the view that petitioner, who is in custody since 24.10.2017 can be enlarged on bail.

In view of above, petition is allowed. Petitioner is ordered to be enlarged on bail, subject to his furnishing heavy bail bonds/surety bonds to the satisfaction of the trial Court.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

February 14, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No