IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32806-2017
Date of decision: 16.2.2018

Rajesh Mahajan
...Petitioner

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gagandeep Singh Chhina, Advocate
for the petitioner.

Mr.Saurav Khurana, D.A.G., Punjab.

Mr.Aditya Dassaur, Advocate
for the complainant.

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H.S. MADAAN, J.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Rajesh Mahajan, an accused in FIR No.113 dated 11.4.2017, under Sections 420/408 IPC, registered at Police Station Basti Jodhewal, Ludhiana.

Briefly stated, the facts of the case as per prosecution version are that the FIR in question was recorded on the basis of written complaint submitted by complainant Sahib Singh son of Raje Singh, Proprietor M/s Nitesh Fruit Company, resident of House No.18 near Jain Hospital, New Grain Market, Jalandhar bye-pass, Ludhiana seeking taking of action against present petitioner for misappropriation/cheating relating to funds of M/s Nitesh Fruit Company, Ludhiana. *Inter alia*, in the complaint, it is mentioned that petitioner in his capacity as accountant of the firm has been looking after the accounts of the firm for the last several years but with the lapse of time, he became dishonest and misappropriated the funds of the firm inasmuch as the provident fund and ES pertaining to Nitesh was not got deposited to the tune of Rs.2,84,284/-; that a cash amount of Rs.8,82,584/- was misappropriated by him; that he got cleared entries regarding tax through bank in his own personal account Rs.10,20,298/-; that he did not deposit cash for TDS Rs.3,89,353/- and that interest on penalty as paid by the firm Rs.3,33,567/-, total Rs.29,10,086/-. According to the complainant, the petitioner/accused did not show the account books to the complainant on one pretext or the other and ultimately when account books were seen then the misappropriation was revealed; that it comes out that the cheques, which had been given for outer payments by the firm were got cleared by him in his personal bank account; that on 6.3.2017, Rajesh Mahajan (petitioner) came to the office of company and admitted in front of witnesses that he has to pay Rs.30 lakhs to the firm; that he had also admitted in writing that in case he did not give the amount due, then legal action be taken against him.

On registration of formal FIR, apprehending his arrest in this case, the petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application. His such application had been assigned to learned Additional Sessions Judge, Ludhiana, who vide order dated 20.7.2017 dismissed the same, as such the petitioner has approached this Court asking for similar relief.

Notice of the petition was given to respondent – State, which put in appearance through counsel and State counsel submitted that though the petitioner has joined the investigation but not rendered full co-operation by disclosing all the facts within his knowledge and had not got the recovery effected.

I have heard learned counsel for the petitioner, learned State counsel assisted by learned counsel for the complainant besides going through the record and I find that no ground is made out for grant of pre arrest bail to the petitioner.

The allegations against the petitioner are very grave and serious misappropriating lakhs of rupees of his employer firm. A writing dated 6.3.2017 signed by the petitioner/accused and attested by several witnesses is there in which he admitted that he owed Rs.30 lakhs to the company undertaking to pay the amount within a day or two. This written compromise leaves no doubt in mind about guilt of the accused since if he had not carried out any embezzlement, he would not have executed this writing agreeing to pay a sum of Rs.30 lakhs to his employer firm. Then CCTV footage snaps have been placed on record by the complainant showing the presence of complainant along with several other persons on 6.3.2017, which also corroborate the fact that he had admitted his guilt. The bank statements also point out towards accused having committed fraud. The petitioner is shown to have past criminal record inasmuch as he is involved in following other criminal cases:

Sr.No.	FIR No./Date, offence & P.S.
1.	FIR No.146 dated 21.7.2017, under Sections 408, 420 IPC, Police Station Civil Lines, Batala.
2.	FIR No.220 dated 31.8.2017, under Sections 420, 406 IPC, Police Station City, Kapurthala.

In case of ***<u>State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268</u>***, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation to find out the manner in which he had committed fraud. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus finding no merit in the petition, the same stands dismissed.

16.2.2018 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No