IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.34167 of 2017
Decided on: 08.05.2018

Sanjeev Jain and another

....Petitioners

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Bipan Ghai, Sr. Advocate
with Mr. Paras Talwar, Advocate for the petitioners.

Ms. Samina Dhir, DAG, Punjab.

Mr. J.S. Bedi, Sr. Advocate
with Mr. Sunil Sihag, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioners pray for grant of anticipatory bail in FIR No.116 dated 13.08.2017 registered under Sections 420, 460 and 120-B IPC at Police Station Division No.8, District Ludhiana.

The arrest of the petitioners was stayed by this Court vide order dated 20.09.2017, by passing the following order:-

> *"The petitioners are seeking pre-arrest bail in FIR No.116 dated 13.08.2017 registered under Sections 420, 406 and 120-B IPC at Police Station Division No.8, District Ludhiana.*
>
> *Counsel for the petitioners submits that primarily this is a dispute regarding statement of accounts. Counsel for the petitioners has further submitted that as per the show cause notice (Annexure P6) issued by the Directorate of Revenue Intelligence, Delhi Zone Unit (in short 'DRI'), the statement of one Krishan Soni who was working as Accountant of the complainant – firm was recorded and he*

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has stated that the jewelery used to be exported mainly to M/s. Jain Jewellery LLC, Dubai and M/s Kundan Jewellery LLC, Dubai and Shi Chanderkant Jain, partner of the complainant used to interact with these overseas buyers; that foreign remittances are received in Ludhiana Branch of IDBI Bank and overall accounting and monitoring is done at the office of Ludhiana firm and all the exports documents are prepared by Sh. Pankaj Jain and his brother Neeraj Jain only at their office and export consignments, especially to be carried out by hand were never sent from the office of Delhi. Similarly, the statement of Kishan Kumar recorded by DRI is reproduced as under:-

> *"Statement of Shri Kishan Kumar S/o Shri Dil Bahadur, Age 32 years, office boy in M/s Nikkamal Jewellers, Karol Bagh, New Delhi was recorded under Section 108 of the Customs Act, 1962 on 29.10.2015 (RUD-14). Shri Kishan Kumar voluntarily stated inter alia that on 27.10.2015 he reached Customs Appraiser Office, Jhandewalan on the instruction of Shri Chandrakant Jain and met Shri Pramod, office boy of M/s Ambica Vikas Udyog, Delhi; that Shri Pankaj Jain of M/s Rishabh Cargo was also present with documents for hand carriage of export like Shipping Bill, Packing List, Invoice, etc.; that he was instructed to fulfill the procedural requirement on behalf of his firm for export by hand carriage, and he put his signatures on the said documents and appeared before the Customs Appraiser as the representative of M/s Nikkamal Jewellers, consignor; that although the gold jewellery was neither brought by him or any staff of his firm, he signed the export documents in the name of his firm as exporter/consignor only on*

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> *the instruction of Shri Chandrakant Jain; and that he had also represented his firm as consignor/exporter on earlier occasions in the cases where gold jewellery did not pertain to his firm.”*

Counsel for the petitioners has further referred to Clause (xx) of the notice where a conclusion was recorded that for their act of omission and commission, M/s. Nikkamal Jewellers through its partner Shri Chandra Kant Jain are thus liable for penal action under Sections 114 and 114AA of the Customs Act, 1962 and the petitioners were also held liable for imposition of penalty under the same Sections.

Counsel has further referred to the Invoice (Annexure P2) dated 26.09.2015 to contend that vide Invoice No.NMJ/EXP/16/15-16, the complainant has exported the gold to Jain Jewellers, LLC Dubai. It is further submitted that as per the electronic fund transfer receipt, the payment was made in favour of the complainant – Nikkamal Jewellers against the aforesaid Invoice No.NMJ/EXP/16/15-16. Similarly, vide export declaration form (Annexure P4) relating to invoice No.NMJ/EXP/17/15-16, the complainant has directly exported the gold to Snobby Art International Limited and received the payment. It is, thus, submitted that the matter is purely with regard to the settlement of accounts and the complainant itself is facing the proceedings before the Directorate of Revenue Intelligence, Delhi. It is further submitted that on receiving the show cause notice, the complainant got the present FIR registered against petitioners only to set up a defence in reply thereto.

Counsel for the State, on instructions from ASI Kamaljeet Singh, submits that the petitioners be directed to join investigation and submit all the documents before the Investigating Officer for the verification.

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List again on 03.11.2017.

In the meantime, the petitioners are directed to appear before the Investigating Officer on 29.09.2017 or on any other date on which the Investigating Officer will summon them by issuing a written notice, to join investigation and in the event of arrest, they shall be released on interim bail on furnishing bail/surety bonds subject to the following conditions:-

1. They shall make themselves available for interrogation by a police officer as and when required;

2. They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

3. They shall not leave India without previous permission of the Court.

The petitioners are further directed to furnish all the documents relating to the payment, etc. before the Investigating Officer."

Thereafter, the matter was referred to the Mediation and Conciliation Centre of this Court for the purpose of exploring the possibility of some amicable settlement and a team of 02 mediators was also appointed. However, as per the report of the Mediators, no settlement could be arrived at between the parties and the matter was again adjourned for arguments.

After hearing learned Senior counsel for the petitioners as well as learned Senior counsel for the complainant, it appears that both the parties are claiming the outstanding amount against each other and primarily, the dispute between the parties is also pending before the

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Directorate of Revenue Intelligence, Delhi Zone Unit.

Counsel for the State, on instructions from HC Harmeet Lal, has not disputed the factual position and submits that the petitioners have joined the investigation and are no more required for any further investigation.

After hearing the learned counsel for the parties and considering the fact that there is a dispute with regard to the settlement of account between the petitioners and the complainant, this petition is allowed and the interim bail granted to the petitioners vide order dated 20.09.2017 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

(ARVIND SINGH SANGWAN)
JUDGE

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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No

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