**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-47205-2018 (O&M)
Date of Decision:-2.11.2018

Kapil Dev Aggarwal ..….… Petitioner

Versus

U.T. Chandigarh ….... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Puneet Bali, Senior Advocate with
Mr. Vaibhav Jain, Advocate;
Mr. Hitesh Malik, Advocate and
Mr. H.S. Sehgal, Advocate for the petitioner.

Mr. Amit Kumar Goyal, Addl. P.P., U.T., Chandigarh.

Mr. N.S. Shekhawat, Advocate with
Mr. Vineet Sehgal, Advocate for the complainant.

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GURVINDER SINGH GILL, J.

1. By way of filing this petition, the petitioner seeks grant of anticipatory bail in respect of a case registered against him vide FIR No.305 dated 19.9.2018 under Sections 406, 420 and 120-B of Indian Penal Code, 1860 at Police Station Central, Sector-17, Chandigarh.

2. The FIR was lodged at the instance of Ms. Shamita Jain, wherein it has been alleged that she was Director of a company named M/s Premium Acres Infratech Pvt. Reg. and that the said company had hired services of Chartered Accountants namely Alok Jain and Kapil Aggarwal c/o M/s. B. Aggarwal & Co. Said Kapil Aggarwal had been introduced to the company

by Parminder Singh Sehgal, Chartered Accountant. It is alleged that balance-sheet for the year 2010-2011 was audited by Alok Jain and a provision for payment of tax for an amount of ₹ 37,51,120/- was made on account of profits of the company. The balance-sheet for the year 2011-2012 was audited by Kapil Aggarwal and was signed by Alok Jain, wherein a provision for tax for an amount of ₹ 25,89,789/- had been made. It is alleged that Parminder Singh Sehgal told the company that he had checked all the books of accounts, tax calculations and that the company will be required to pay the taxes as per the provisions made in the balance-sheets and consequently the company transferred the requisite amount in the account of Kapil Aggarwal so as to pay-off the tax liability of the company. Parminder Singh Sehgal is alleged to have shown stamped acknowledegment receipts depicting the payments/deposit of the taxes with the Income Tax Department and had represented that the assessments in respect of the assessment years in question had been accepted as complete by the Income Tax Department. It is alleged that the company had deposited an amount of ₹ 1,23,47,871/- from time-to-time in the account of Kapil Aggarwal so as to pay the income tax on behalf of the company. It is alleged that subsequently when the husband of the complainant came suspicious and got the record verified from Income Tax Department, it was revealed that the aforesaid income tax had not been paid and that the acknowledgement receipts in question, which had been shown to the company by Parminder Singh Sehgal were all forged. It is thus alleged that Parminder Singh Sehgal in connivance with Alok Jain and Kapil Aggarwal had played a fraud with the company as well as with the Income Tax Department.

3. Notice of this petition was issued to State. The learned State counsel assisted by learned counsel for the complainant is opposing the petition.

4. The learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that the present FIR has been got lodged by a person, who was not competent to lodge the same inasmuch as the said complainant Ms. Shamita Jain was no longer a Director of the company when the FIR was lodged as she had already resigned from Directorship of the company in 2012. It has further been submitted that the petitioner being a professional had advised the company to avail of special schemes floated by the Income Tax Department and that while availing the said schemes the entire tax liability has already been paid-off. The learned counsel, in this context, has referred to Declaration Scheme Rules, 2016 (Annexures P-14 and P-15), under which the entire tax liability had been paid-off in installments.

5. It has also been submitted that another identical complaint was also filed with the police at Mohali, which was duly inquired into and was found to be false. The learned counsel in this context has also drawn the attention of this Court to an Inquiry report of Mohali Police (Annexure P-11), obtained under provisions of Right to Information Act, wherein it had been reported that upon verification of the record, the entire taxes have been found to be paid and it had been recommended that the complaint be filed as closed. It has thus been submitted that since the entire amount allegedly usurped by the petitioner and other accused stands deposited with Income Tax Department, no offence can be said to be made out and that in these circumstances, the petitioner deserves the concession of anticipatory bail.

6. On the other hand, the learned State counsel assisted by learned counsel for the complainant has submitted that infact the commission of alleged offence stood completed in the year 2011-2012, when despite the company having paid huge amount to the petitioner towards payment of income tax, the same was not deposited and was usurped by the petitioner and forged acknowledgement receipts were shown to the company by the petitioner and his co-accused. The learned counsel has further submitted that even if, at a later stage, any amount was deposited with the Income Tax Department by the petitioner, the same was deposited by the petitioner only after the police started inquiring into the matter and that the said subsequent deposit of tax would not wash out the offence under Sections 406 and 420 of Indian Penal Code, 1860 committed by the petitioner, more particularly, when the petitioner had also preparerd forged acknowledgement receipts. The learned counsel has further pointed out that infact there are three other cases against the petitioner, which shows that he is a habitual offender and a conman and, as such, does not deserve the concession of bail. The learned State counsel has also submitted that since the acknowledgement receipts are yet to be recovered, therefore, no case for grant of bail to the petitioner is made out.

7. I have considered rival submissions addressed before this Court. As regards the contention of the learned State counsel that there are other cases pending against the petitioner, it has been pointed out by the learned counsel for the petitioner that infact two other cases i.e FIR No.38 dated 30.1.2015 u/s 406, 467, 468, 471, 419, 420, 506, 120-B IPC, P.S. Sector 17, Chandigarh and FIR No.164 dated 13.4.2016 u/s 420, 467, 468, 471, 120-B IPC, P.S. Sector 17, Chandigarh were got registered at the instance of Sanjay Jain, husband

of the complainant in the present case, wherein the petitoner has already been granted bail. It has been submitted that infact the dispute is between the owners and share-holders of the company whereas the petitioner is being involved merely on account of the fact that his professional services as a Chartered Accountant had been hired by the company, during the course of which he had highlighted gross irregularities in accounts of the company and siphoning off the funds of the company which invited ire of the Directors i.e Sanjay Jain and Ms. Shamita Jain. The third case is stated to have been lodged in Delhi wherein also the petitioner is on bail.

8. It is not disputed that the entire amount of ₹ 1,23,47,871/- stands deposited with the Income Tax Department although the same was deposited in the year 2016, i.e. much after the same was due to be deposited during the relevant assessment years 2010-2011 and 2011-2012 despite the fact that the company had paid the said amout to petitioner much earlier.

9. Bearing in mind the undisputed fact that the amount in question already stands deposited with the Income Tax Department and that to decide the issue of misappropriation the material fact would be the date of entrustment of the amount to the petitioner and the date of its deposit with the Income Tax Department, which is a matter to be established from documentary record and for which, in my opinion, custodial interrogation is not warranted as the said facts would be borne out from the record of the bank and record maintained in Income Tax Department. The contention of State counsel that forged acknowledgement receipts can only be recovered through custodial interrogation can not be accepted in view of totality of circumstatnces so as to deny concession of anticipatory bail. The petition, as such, is accepted and

the petitioner, in the event of his arrest, shall be released on bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join investigation as and when called upon to do so and shall cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

10. It is however made clear that none of the observation made above shall be taken to be an expression on merits of the main case.

11. The petition stands accepted accordingly.

2.11.2018 **(Gurvinder Singh Gill)**
pankaj **Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No