IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M No.47947 of 2018
Date of Decision: 15.12.2018

Kamal Kishore Goyal ....Petitioner

Versus

State of Haryana ....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Akshay Bhan, Sr. Advocate
with Mr. Nilesh Bhardwaj, Advocate
and Mr. Sanchit Sahijpal, Advocate
for the petitioner.

Mr. Chetan Sharma, A.A.G., Haryana.

Mr. Deepam Raghava, Advocate
for the complainant.

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DAYA CHAUDHARY, J.

Petitioner-Kamal Kishore Goyal has filed the present petition under Section 439 Cr.P.C for grant of regular bail to him in case FIR No.37 dated 19.01.2018 registered under Sections 406, 420, 467, 468, 481 and 120-B of Indian Penal Code at Police Station Sector 14, Gurugram.

Learned Senior counsel for the petitioner submits that the allegations levelled against the petitioner are civil in nature. Petitioner neither purchased any trailer from the complainant nor the complainant has shown any document to the prosecution agency to prove any such transaction. The petitioner borrowed some amount from the complainant at different stages as he was suffering from financial crunch. He had signed

Memorandum of Understanding as guarantor. The petitioner had paid an amount of Rs.21.50 crores, inclusive of interest, against an amount of Rs.19.4 crores given by the complainant on various occasions. Learned senior counsel also submits that there was no intention of the petitioner to defraud the complainant in any manner. The Memorandum of Understanding was signed in the year 2016 and the last transaction between the petitioner and the complainant was in the year 2017, whereas, the present FIR has been registered on 19.01.2018. Learned counsel also submits that there was an understanding between the petitioner and the complainant, whereby, it was agreed that 48 vehicles were to be handed over to the accused persons along with payment of amount. The Memorandum of Understanding was entered into between both the parties. Learned senior counsel further submits that as per case of the complainant, total 79 vehicles were given to the accused persons but he failed to produce any document. At the end, learned senior counsel submits that there is an un-explained delay in lodging of the FIR and no reasonable explanation whatsoever has been given. The petitioner has already paid excess amount against the amount received by him from the complainant, which is clear from the accounts statement, which is in the handwriting of the complainant himself. The complainant is neither a financer nor a banking institution but he is charging interest @ 10% to 30% per month, which is also illegal. The petitioner is in custody since 23.04.2018 and no useful purpose would be served by keeping him in custody.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground of serious allegations. Both the parties are known to each other for a long period and they were engaged in a joint venture business activities. A fraud of crores of rupees is involved. In lieu of amount, a number of vehicles were given by the complainant party which are not in a condition to ply the same on road. An undertaking was there between the accused and the complainant, whereby, it was agreed that total 48 vehicles were to be handed over to the accused persons along with money but the NOC of only six vehicles was given. The complainant came to know that copies of auction purchase documents regarding three properties, which were handed over by the accused persons to the complainant and receipts for payment made by the accused persons to the Corporation Bank were handed over by the accused persons which were forged and fabricated one. It was also informed by the Corporation Bank to the complainant that the trucks handed over by the accused persons to the complainant were hypothecated with the Corporation Bank and NOCs were issued by the Bank in favour of accused persons.

Learned counsel for the complainant has also submitted that there are serious allegations of fraud and forgery and recovery has not been effected from the accused. There is a possibility that accused person may interfere with the investigation of the case, in case, he is released on bail.

Heard the arguments of learned counsel for the parties and have also perused the contents of the FIR as well as other documents available on the file.

As per allegations levelled in the FIR, accused Kamal Kishore Goyal and his wife Anita Goyal were known to complainant Vikram Gupta since long as they were engaged in the business activities. During the period 2012-2015, the complainant had given 79 vehicles to the accused persons but those vehicles were not returned and the money was also not returned.

The complainant asked the accused persons to settle the accounts and return the vehicles but the vehicles were not returned on the ground that he had already invested approximately 13 crores in purchasing properties in an auction from the Corporation Bank. The accused petitioner agreed to pay an amount out of the sale of properties. The accused person gave a cheque of Rs.one crore to the complainant for re-payment of the money. There was a proposal that the accused will transfer 48 vehicles to the complainant and would pay an amount of Rs.2,73,00,000/- by 31.03.2017 and the remaining amount would be paid by 31.03.2018 and also issued two cheques drawn on Corporation Bank. The accused handed over No Objection Certificate only for six vehicles only. The complainant visited the Corporation Bank and came to know about the auction purchase document were fake and forged at the instance of accused persons. Thereafter, the FIR was registered. Serious allegations are there of forging of the documents and the vehicles, which were given to the complainant, were already hypothecated with the bank and were not in a condition to use without having documents. It is a clear cut case of fraud. In spite of giving an undertaking, neither the money was returned nor any document was handed over so that the complainant may use the vehicle.

While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof; the severity of the punishment and also the character of the accused as well the circumstances. It is also to be seen as to whether there is a genuine case against the accused and the prosecution will be able to produce *prima facie* evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt. No doubt, it is a case of economic offence and the offence, where economic offence is there, the bail is granted after some time. The intention of the party is also relevant to be seen while granting bail in such like cases.

The Court while granting bail is to exercise its discretion in a judicious manner and not as a matter of course. Although, at the time of granting bail, a detailed examination of evidence and elaborate discussion of merits of the case is to be taken into consideration. However, while granting bail, certain other factors are also necessary to be seen. For the purpose of granting bail, the Court is to see the reasonable apprehension of the witnesses being tampered with and the interest of the party. The nature of gravity of accusation against the accused person is a serious offence.

In the present case, there are serious allegations of cheating and criminal breach of trust. In case, the accused petitioner is granted regular bail, there is a possibility that he may tamper with the evidence or influence the witnesses. Even a single witness has not been examined so far.

Accordingly, no ground is made out to release the petitioner on regular bail at this stage.

The petition is accordingly dismissed.

(DAYA CHAUDHARY)
15.12.2018 **JUDGE**
gurpreet

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No