

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

**CRM-M No.4874 of 2018 (O&M)
Decided on: 22.02.2018**

Piyush Dwivedi

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Sushil Shukla, Advocate
and Mr. Ankush Chowdhary, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. R.S. Malik, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.688 dated 28.10.2017 registered under Sections 420, 406, 506 IPC at Police Station Sonapat City, District Sonapat.

As per the allegations in the FIR, the complainant alleged that he, on behalf of his company – M/s. Future Prime Beverages Private Limited had entered into an agreement of 100% buyback with Rs.20 lacs bank guarantee per annum, in the month of October, 2014 with M/s Ambience Water Solutions and Marketing Limited, Noida through its Directors namely Piyush Dwivedi and Ranjan Tiwary. It is further stated in the FIR that it was assured that the accused persons shall install a water plant with its own brand name as Future Choice and will produce 10 hours of production i.e. 3000 bottles per day and the complainant will have to spend Rs.1.43 crore which includes

machinery, branding, marketing, etc. It is further alleged that the water plant was installed in the month of November, 2014 and Rs.1.43 crore was paid by the complainant's company from November, 2014 to September, 2014 and out of the aforesaid amount, an amount of Rs.1.20 crore was paid by obtaining a loan from Dena Bank, Sonapat, Haryana and the complainant is paying the monthly installment of Rs.4,25,000/- since September, 2015. The water plant was ready for business production in July 2016, however, the accused failed to lift the production of the water plant and further failed to give the bank guarantee of Rs.20 lacs per year to the complainant's company. It is also stated that the machinery installed was of under capacity and was not as per the terms of the agreement and despite repeated request, the accused company has failed to abide by its terms and conditions and has, thus, cheated the complainant's company by giving false promise and have taken Rs.1.43 crore from the complainant. It is further stated in the FIR that the total loss caused by the complainant's company is Rs.3.50 crore on the date of registration of the FIR and the accused person from the very beginning had a dishonest intention to cheat the complainant.

Counsel for the petitioner has submitted that there is a dispute resolution clause in the agreement and the matter can be referred to an Arbitrator, it being of civil nature. It is also submitted that the agreement dated 08.12.2014 was executed between the complainant's company – M/s. Future Prime Beverages Private Limited and the accused company – M/s. Ambience Water Solutions and Marketing Limited and the agreement posed certain obligation on the complainant which were not abide by the complainant, like

commencing of production within six months of execution of the agreement, not acknowledging business with competitors and the bank guarantee was payable after commercial production commences. It is, thus, submitted that the complainant who could not start the commercial production in time had falsely implicated the petitioner in the present FIR. It is also stated that the complainant's company has started its production after obtaining the regulatory permission in July, 2016 and has started the production under its brand name '*Mountaqua Future Prime*' which is in violation of the agreement. It is also submitted that the petitioner's company has communicated to the complainant that the agreement was cancelled vide letter dated 26.05.2017, on account of non-compliance of the terms and conditions of the franchisee agreement because two cheques given by the complainant towards the outstanding payment and the payment of the sales tax were dishonoured and the complaint under Section 138 of the Negotiable Instruments Act was filed against the complainant – Vikas Dhull.

Counsel for the State, on instructions from the Investigating Officer, assisted by counsel for the complainant has submitted that the petitioners were given two notices under Section 160 Cr.P.C. on 07.12.2017 and 20.12.2017 but they never joined the investigation. It is further submitted that the petitioner/accused, entered into a franchisee agreement dated 08.12.2014 with dishonest intention and induced the complainant to pay an amount of Rs.1.43 crore out of which Rs.1.20 crore was obtained by raising a loan from the bank. It is further submitted that despite the fact that the plant was ready for

commercial production, the petitioner never offered to give the bank guarantee of Rs.20 lacs per year and never lifted the production of 3000 bottles per day and has supplied an inferior quality of machine. It is further submitted that instead of adhering to the franchisee agreement, the accused persons after obtaining a huge amount of Rs.1.43 crore from the complainant has terminated the contract vide letter dated 26.05.2017 which shows that they had dishonest intention since the time, the agreement was entered between the parties.

After hearing counsel for the parties, I find no merit in the present petition for grant of anticipatory bail to the petitioner. Admittedly, it is the own case of the accused persons that there was an agreement between the parties and they have received a huge amount of Rs.1.43 crore and thereafter, cancelled the same without meeting their obligation under the contract. Therefore, the allegation of the complainant that the accused persons have cheated him and has caused great financial loss to him as the accused persons had made a false representation with dishonest intention and the complainant believing such representation has parted away with a huge amount of Rs.1.43 crore are apparent. It is also not disputed that the accused did not give bank guarantee of Rs.20 lacs per year as per the agreement between the parties. It is also not disputed that the accused persons has never lifted the promised production of 3000 bottles per day and rather unilaterally cancelled the agreement, thus, the dishonest intention on the part of the petitioner is apparent from the bare perusal of the FIR. It is worth noticing her that despite two notices issued by the police under Section 160 Cr.P.C. the accused persons have even failed to appear.

In view of the above, no ground for grant of anticipatory bail to the petitioner is made out.

Dismissed.

22.02.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No