IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48876-2018
Date of decision: 13.11.2018

Vivek Kumar **...Petitioner**

Versus

State of Haryana **...Respondent**

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saurabh Dalal, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana
assisted by ASI Naveen Kumar.

Mr. Manish Soni, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. *(Oral)*

Prayer in this petition, filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner in FIR No. 298 dated 11.07.2018, under Sections 408, 420 and 120-B of the IPC, registered at Police Station Sector 18, Gurugram.

Brief facts of the case are that an FIR was lodged by Shobha Shandilya, Director of PLN9 Security Services Pvt. Ltd. against Lakhan Singh, General Manager (Accounts Finance), Vivek Kumar Chaudhary, Assistant Manager (Accounts Finance), Amit Aggarwal, Regular Chartered Accountant, who were working in the company of the complainant, with the allegations that the complainant's company is running its business in the name and style of PLN9 Security Services Pvt. Ltd. and the complainant and her husband are the directors of the company. The company is having four departments i.e. H. R. Department headed by Mr. Sunil Verma (Head H.R.), Operations Department headed by Col. Vinay Mathur (V. P. Operations), Finance Process headed by Mr. Lakhan Singh (G. M. Finance).

It is further stated in the FIR that petitioner Vivek Kumar Chaudhary and co-accused Lakhan Singh joined the complainant's company on 22.06.2015 and 01.09.2014, respectively, and they have committed financial irregularities by playing fraud with the company. The details of the *modus operandi* adopted by the accused persons is given in the FIR itself that accused persons started preparing false and forged financial documents and pasted the same in the audit report showing financial losses in the financial year 2016-2017. The complainant has further alleged that on account of her ill health, she was bed ridden and remained out of active work as she was detected Ovarian Cancer for which she was operated on 05.09.2016 and her husband/Director had to travel a lot for the business of the company. It is further stated that on account of the loss, caused by the accused persons by preparing false and forged documents, it has resulted into late filing of income tax returns and late deposit of legal dues under the Provident Fund Act, ESIC Act, Service Act and TDS etc. for which the company is facing prosecution.

Learned counsel for the petitioner has submitted that in fact co-accused Lakhan Singh was the head of the Accounts Department and no embezzlement was proved on record.

Learned counsel for the petitioner has further argued that the petitioner was assigned the duty of reporting to Lakhan Singh and he used to tally the data entry. It is further submitted that all the four departments are interconnected and any entry made by one department is further counterchecked by another department and, therefore, the allegations in the

FIR after the resignation of the petitioner from the company is an afterthought and he cannot be held liable for the alleged loss suffered by the company. Learned counsel for the petitioner further submitted that there are allegations in the FIR even for the period, prior to joining of the petitioner in the company.

Learned counsel for the petitioner has further submitted that petitioner has even served a notice upon the company to clear his dues and the liability of depositing the PF and ESIC is of the H.R. Department and not of the Finance Department and entire case is based on documentary evidence which is already with the complainant, hence, the custodial interrogation of the petitioner is not required.

Learned State counsel, on instructions from ASI Naveen Kumar, assisted by learned counsel for the complainant, has, however, opposed the grant of anticipatory bail to the petitioner.

Learned counsel for the complainant has submitted that as per the set procedure, in order to make any payment, the petitioner and co-accused were required to verify the bills and get the same countersigned by one of the Directors of the company and then release the payment against a receipt, whereas, the petitioner has forged number of cash payments/bank vouchers in which neither there are signatures of any of the Directors of the company nor any bill/receipt was raised.

Learned counsel for the complainant has shown photocopy of certain bills which are alleged to have been forged by the petitioner.

Learned State counsel has submitted that as per the audit report, which was got conducted by the complainant's company, it has come that majority of the bills were not signed by the Director. Learned State counsel further submitted that it has also come in the internal audit report of the company that *modus operandi* of the accused persons was that while preparing the vouchers, they used to tally higher amounts and in one of such instances, on 19.04.2016, an amount of Rs. 50,000/- was paid to Col. Vinay Mathur as per a voucher but the same has been recorded in tally as Rs. 5 Lakh and in such a manner, there are number of instances of committing forgery and fraud with the company.

Photocopies of two audit reports of the company have been placed on record.

After hearing learned counsel for the parties, I find that there are serious allegations against the petitioner that he, being Assistant Manager (Accounts Finance), along with other co-accused has committed a fraud of Rs. 6 Crore with the complainant's company by forging and fabricating the financial documents/records and, thus, custodial interrogation of the petitioner is required.

Therefore, in view of the serious allegations against the petitioner, he is not entitled to discretionary relief of anticipatory bail.

Petition stands dismissed accordingly.

November 13, 2018 **(ARVIND SINGH SANGWAN)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*