

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

Criminal Misc.No.M-53083 of 2018 (O&M)

Date of Decision : 07.12.2018

Rishi Miglani

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Deepak Vashisth, Advocate
for the petitioner.

Mr. Raj Kumar Makkad, DAG, Haryana.

Mr. Sameer Sachdeva, Advocate for the complainant.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant petition under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.0292 dated 02.05.2018, registered under Sections 406, 420 IPC at Police Station Mujesar, District Faridabad.

Briefly stated, it is a case of the prosecution that a company under the name and style of M/s Uttam Strips Limited, registered office 39, Okhla Industrial Area, Phase-III, New Delhi was being run by its Managing Director Rishi Miglani (petitioner herein) and directors Smt. Shikha Miglani, Ramesh Kumr Miglani and Vimal Kaul.

It is further alleged that complainant company was being run in the name and style of M/s Eurokon Global Exports Pvt. Ltd. which was engaged in manufacturing, sale purchase of HR Coil, HR Sheet, CR Strips, CR Coil, MS Tube etc. It is specifically asserted that the aforesaid managing director and directors, who have been arrayed as accused Nos.2

to 5 in the complaint submitted to the police, are in-charge and responsible for the conduct of the business activity and day to day affairs of the company. It was agreed between the accused company and the complainant to the effect that complainant shall supply raw material and the accused shall perform the job work within a period of 30 days from the supply of raw material and shall return the finished goods and the scrap to the complainant within a stipulated period. It was also agreed that the title of the goods will remain to be vested with the complainant company. It is alleged that right from the first day of the starting of work, the accused made false and dishonest representations. The job work was to be carried out between 26.05.2015 to 16.12.2015. However, from 17.12.2015 to 27.04.2016, the complainant had supplied the raw material to the accused which was duly received by them by issuing challans and receipts. In spite of that, neither any job work was carried out nor the raw material was returned. The complainant made a request to the accused to return the material of furnished goods, but to no avail. Even on 19.02.2018, the officials of the complainant company visited the factory of the accused and found that no raw material was available. Rather, they came to know from the staff of the accused company that certain raw material, supplied by the complainant company, was sold to other persons.. In this manner, the accused misappropriated approximately Rs.1,99,94,212/- of the raw material. Apart from it, the complainant had advanced approximately a sum of Rs.85,00,000/- to the accused.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the petitioner has submitted that the matter

is purely of civil nature; that it is violation of contract between the parties; that the raw material was not supplied within the stipulated period and various cheques were issued by the petitioner to the complainant which were dishonoured and now the proceedings under Section 138 of the Negotiable Instruments Act are pending; and that moratorium has already been issued by the National Company Law Tribunal New Delhi vide order dated 09.04.2018 (Annexure P-2), therefore, no criminal liability of the petitioner is made out.

On the other hand, learned State counsel has submitted that a prima facie case is made out against the petitioner, therefore, his custodial interrogation is necessary.

This court has given thoughtful consideration to the rival contentions.

The remedy of anticipatory bail is extraordinary and should be used in exceptional cases. The Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others*** 2011 AIR (SC) 312 pleased to issue the following parameters:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object*

of injuring or humiliating the applicant by arresting him or her.

- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

Keeping in view the seriousness of the offence, the petitioner is required for custodial interrogation. As such, no case to grant the concession of anticipatory bail to the petitioner is made out.

Accordingly, the instant petition stands dismissed.

07.12.2018
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No