

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-12268 of 2019
Date of Decision: 30.09.2019

Sanjay Kumar @ Sanju

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Achin Gupta, Advocate
for the petitioner.

Mr. Rakeshinder Singh Sidhu, A.A.G. Punjab.

Mr. P.K.S. Phoolka, Advocate
for the complainant.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.34 dated 22.02.2019 registered for the offence punishable under Section 406 of Indian Penal Code, at Police Station Civil Lines Bathinda, District Bathinda.

Heard.

Learned State counsel on instructions from HC Paramjit Singh submits that the petitioner has joined the investigation but the recovery of money he had taken from Amit Kumar to pay to Kulwinder Singh is to be effected from him.

As per allegations in the FIR, Amit Kumar and Kulwinder Singh had started their joint business in which ₹2.5 lakhs were contributed by Kulwinder Singh on the guarantee of Sanjay Kumar @ Sanju (petitioner)

and Anil Singla. As security, Amit Kumar had given four blank cheques of

his wife to petitioner and Anil Singla. Amit Kumar contributed ₹1,50,000/- and with the total amount of ₹4 lakhs he made advance and purchased spectacles and connected accessories worth ₹18 lakhs. The business was looked after by Amit Kumar and Kulwinder Singh for sometime and sale amount of ₹3 lakhs was given to petitioner and Anil Singla. Thereafter, the business was closed. The entire articles lying in the godown were taken into possession by the petitioner and Anil Singla.

Kulwinder Singh demanded his contribution of ₹2.5 lakhs from Amit Kumar, who told him that he paid ₹4 lakhs with interest to petitioner and Anil Singla, who returned four blank cheques of his wife. However, blank cheques given by Amit Kumar were not returned. Articles lying in the godown were also in possession of petitioner and Anil Singla of which details were given in the FIR.

The complainants have alleged that petitioner and Anil Singla have committed fraud with them.

Learned counsel for the petitioner has argued that in fact Amit Kumar had taken ₹10.60 lakhs from the petitioner and executed a pronote and receipt (Annexure P-2). He also entered into agreement dated 31.05.2017, vide which he handed over articles lying in the shop to petitioner. For the remaining payment of pronote amount after adjusting value of stock given to petitioner, he issued another cheque dated 12.03.2019 (Annexure P-4) of ₹6.60 lakhs. He also gave undertaking (Annexure P-5) for clearance of the cheque. All these documents show that there was loan transaction between the petitioner and Amit Kumar and the contention of complainants that fraud was committed by petitioner with them is not correct.

Learned State counsel assisted by learned counsel for the complainant has argued that it has come on record that Amit Kumar had given ₹2.50 lakhs to petitioner for payment to Kulwinder Singh. He gave another amount of ₹2.45 lakhs for payment to Maya Optical and Fair Optical, Fatehpur, Delhi. The petitioner had paid only ₹1.45 lakhs to that company and embezzled ₹3.50 lakhs. He had also embezzled material of ₹16.80 lakhs and ₹6.50 lakhs lying in the godown of complainants.

It is a case based on documentary evidence. The petitioner is alleging advancement of loan to Amit Kumar and execution of various documents (Annexures P-2 to P-5) by him, which are required to be verified by the investigating officer. The alleged undertaking and guarantee given to Kulwinder Singh by petitioner is stated to be oral, which is also subject to verification during investigation.

Keeping in view above facts and that the petitioner has joined the investigation but without expressing any opinion on the merits of the case, this petition is allowed and order dated 26.03.2019 is made absolute till the presentation of challan, subject to the following terms:-

- (i) that the petitioner shall make himself available for interrogation by the police as and when required;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) that the petitioner shall not leave India without the prior permission of the Court.
- (iv) that the petitioner will seek regular bail on the presentation of challan in Court.

September 30, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No