S.No.101

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13713 of 2019(O&M)
Date of Decision:27.03.2019

Kapil **.....Petitioner**
Vs.
State of Haryana **.....Respondent**

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. Baldev Singh Badhran, Advocate for the complainant.

Mr. M.D. Sharma, AAG, Haryana.

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Rajbir Sehrawat, J.(Oral)

This is a petition seeking anticipatory bail to the petitioner in case FIR No.859 dated 29.11.2018 registered under Sections 420, 408, 467, 468, 471, 120-B, 34 IPC at Police Station Sector Camp Palwal, District Palwal.

In present case, the FIR against the petitioner had come into being on a complaint lodged by Parvesh Prashar, the owner/partner in the Company M/s Prashar Motor Private Limited, Palwal. It is alleged in the FIR that the showroom was opened by the Company for sale and service of Hyundai cars. The petitioner was working as Cashier-cum-Clerk for the almost two years in that showroom. It was the duty of the petitioner to receive cash and cheques from the customers on account of booking/ sale of the vehicles. In the process, during the period from January, 2018 till August, 2018, he used to prepare the ledger of the Company as well. However, while receiving the money from the customers and maintaining the ledger of the Company, the petitioner committed a fraud. He used to receive the cash amounts and the cheques from the customers and giving them the receipt. Thereafter, he used to deposit the cheques in the Bank account of the Company. However, the counterfoil of Bank cheque deposit slip; purportedly having been issued from the Bank, would show an inflated amount as having been deposited in the Bank account of the Company, as compared to actual amount of cheque. Accordingly, the inflated amount was mentioned in the ledger of the Company. In lieu of that inflated entry, the petitioner would take the cash away from the cash-in-hand of the Company by making fake entries of expenses. In the process, the balance in the Company ledger and Bank accounts were tallying and kept at par during this period. However, the Company was actually caused loss of Rs.67 lakhs due to these inflated entries shown in the record of the Company and actually taking away the cash money by the petitioner. It is further alleged in the FIR that when the matter came to the knowledge of the complainant, then Panchayati meeting was also held. In that meeting, the petitioner and his father duly acknowledged their fault. Accordingly, the father of the petitioner assured the Company to reimburse the entire loss. Accordingly, the father of the petitioner had paid an amount of Rs.29 lakhs to the Company by two different cheques for Rs.15 lakhs and Rs.14 lakhs respectively. However, the third cheque for the balance amount of Rs.38 lakhs, which was issued by the father of the petitioner, was not realized because the father of the petitioner had stopped the payment of the said cheque. Accordingly, the complaint was lodged with the Police.

Learned counsel for the petitioner has submitted that the case against the petitioner is concocted. Although counsel for the petitioner has not denied that the father of the petitioner has repaid an amount of about Rs.29 lakhs to the complainant in lieu of the alleged fraud committed by the petitioner, however, it is submitted by the counsel that the said amount was paid subject to reconciliation of the accounts of the Company. It is further submitted that the said amount was paid by the father of the petitioner only under pressure from the Police. It is also argued by the learned counsel for the petitioner that since one of the partners in the Company was duly verifying the entries made in the ledger of the Company everyday, therefore, there cannot be any possibility of the amount being embezzled by the petitioner. In the end, it is submitted by counsel for the petitioner that, in any case, it is a matter of civil nature.

Notice of motion.

On asking of the Court, Mr. M.D. Sharma, AAG, Haryana accepts notice on behalf of the State. Mr. Baldev Singh Badhran, Advocate appears for the complainant.

On the other hand, learned counsel for the State, being assisted by Mr. Baldev Singh Badhran, learned counsel for the complainant, submits that the modus opernadi of the petitioner has partly been investigated by the Police. It has come during the investigation conducted so far that for the cheque bearing the same number, the amount deposited with the Bank is the amount mentioned in the cheque, however, while making the entries in the ledger of the Company, the amount entered against the same cheque number is the highly inflated. It has been pointed out as an example that for a customer's cheque No.490240; which was for an amount of Rs.10,000 only, the deposit in the bank account of the Company is Rs.10,000/-, whereas the counter foil of the deposit slip of the same cheque placed in record of Company is for an amount of Rs.1 lakh. Accordingly, this amount has been entered into the ledger of the Company. In the process, an amount of Rs.90,000/- has been recorded in the excess in receipt part in the account of the Company. This was repeatedly done by the petitioner. The excess amount which was shown in the receipt part of ledger of the Company used to be taken away by the petitioner from the cash in hand of the Company by creating fake entries of expenses, so that ledger account of the Company keeps on matching with the Bank account of the Company. Hence, the fraud could not be detected even by the partner who was signing the entries in company records. It came to knowledge only when the Company went into actual losses.

It is further submitted that the petitioner had even got prepared a fabricated Bank stamp so as to fabricate the counter foils of the deposit with the Bank. Accordingly, learned counsel for the State submits that to unearth the true dimensions of the crime committed by the petitioner, his custodial interrogation would be required. There are so many facts involved in the case which only the petitioner can disclose and he will disclose only when he is taken into custody. It is further submitted by the counsel for the complainant also, that there has been absolutely no pressure from the Police. The father of the petitioner had repaid part of the amount embezzled by the petitioner only after duly acknowledging the fault of his son. However, thereafter, even the father of the petitioner had shown his connivance with the petitioner.

Learned counsel for the complainant has also submitted that the petitioner and his father have resorted to further cleverness by making an attempt to create evidence in their favour by filing the civil suit for recovery of the abovesaid amount of Rs.29 lakhs; which was paid by him to the Company. Otherwise, no orders in favour of the father of petitioner has been passed in that civil suit as well. Civil suit has been filed only to create a kind of evidence after taking a turn-around, so as to wriggle out of the acknowledgment of the fraud; which was made at the time of making the payment.

Having heard learned counsel for the parties, this Court finds that the arguments raised by the learned counsel for the petitioner do not carry any weight. Hence, the same cannot be accepted so as to extend the concession of anticipatory bail to the petitioner.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

The facts, as mentioned above, and the arguments raised by learned counsel for the parties, do not make out any mitigating circumstances showing any, ex-facie, innocence on the part of the petitioner. Rather an innovative methodology of committing fraud is clearly suggested as having been adopted by the petitioner. Hence, if the petitioner is granted concession of anticipatory bail, it would be totally a misplaced sympathy. Otherwise also, this Court finds sufficient substance in the argument of the learned counsel for the State that if the petitioner is granted protection against his arrest, at this stage, then the Police would not be able to unearth the true dimensions of the crime committed by the petitioner.

In view of the above facts and circumstances, this Court is also of the considered opinion that for carrying out a free and fair investigation, the Police may require the custody of the petitioner. Hence, it is not appropriate to preclude the free and fair investigation in the case; by granting protection to the petitioner against his arrest.

Hence, finding no merit in the present petition, the same is dismissed.

March 27, 2019 **(RAJBIR SEHRAWAT)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No