Sr. No.107

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

**CRM-M-30872-2019
Date of decision:22.07.2019**

Ajmer Singh ......**Petitioner**

versus

State of Punjab

.......**Respondent**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amit Kumar Walia, Advocate
for the petitioner.

<u>Rajbir Sehrawat, J(Oral)</u>

This is a petition filed under Section 438 Cr. P.C. for grant of anticipatory bail to the petitioner in case FIR No.70, dated 28.07.2015 under Sections 420/406/120-B IPC, registered at Police Station Lehra, District Sangrur.

FIR in the case came into being on the statement of one Hakam Singh in which he had alleged that co-accused of the petitioner, Harjinder Singh Handa, Rajinder Singh, Parminder Singh @ Lucky, Kamal Kant, Darshan Singh and Brishbhan created a company in the name and style For-S Forever Pvt. Limited for the purpose of getting investment from the public. They even started representing about the Registration Number of the company with the government. The above said persons along with other co-accused got investment from the complainant and other persons. They assured the high returns of invested money; by giving double money in three years. In the mean-time, they even changed the name of company as Ambit Corporation Ltd. To instill the same confidence, they even repaid some money to some of the investors on account of the return of the investments. However, since August 2014, they have not returned any money or dividend or interest on the said account. In the process, the complainant and many other people have invested an amount of Rs.3.02 cores with the accused. After having received the investment when the complainant and other people started demanding their money back, the accused started threatening the investors. On this complaint, the police inquired into the matter. During that process, name of the more cheated investors came to light. Role of other accused including the petitioner also came to the light. Hence, the FIR was got registered for the purpose of full fledged investigation.

While arguing the case, learned counsel for the petitioner has submitted that the petitioner has joined the company only as an employee, although he was cited as share holder of 1%. Still further it is submitted that the petitioner had resigned from employment in January 2015 itself. For the duties performed by him, he received only an amount of Rs.4.04 Lakhs as part payment of the salary. Still further it is submitted that challan against other co-accused has already been filed. While referring to the Order passed by the Additional Sessions Judge, whereby the anticipatory bail was declined to the petitioner, learned counsel for the petitioner has submitted that the Court has not pointed out, as to what documents it was relying upon against the petitioner. No such documents have been mentioned in the challan filed against the other co-accused. It is further submitted that the name of the petitioner has not been mentioned by the complainant as such.

Of course, the accused, as an individual, has a right to life and liberty, however, that right to life and liberty can be curtailed according to the procedure prescribed by the law. In case of criminal investigation, the ordinary prescribed procedure is that the Investigating Officer can arrest the accused even without warrant. But; to ensure that innocent person is not unduly harassed by the Police Officers by misusing their authority, special and extraordinary power has been conferred upon the courts to protect the individual from unnecessary harassment. However; this power is so extraordinary that this is not even available in some parts of the country qua all the offences and qua some offences under special statutes; not available in the entire country. Therefore, being a special power, the power under Section 438 Cr.P.C has to be exercised only in cases, where there are circumstances leading, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that if the accused is protected from the arrest, then the investigation of the case shall not be unduly hampered.

Having heard learned counsel for the the petitioner and perusing the case file, this Court does not find substance in the argument raised by learned counsel for the petitioner. Undisputedly this is a case involving alleged organised fraud by incorporating a company. Although in the initial version of the company, the petitioner might not have been named as the person concerned, however, the said company was converted into another company, namely, Ambit Corporation Ltd. In the said company, admittedly, the petitioner is reflected as share holder to the extent of 1% of the capital. Therefore, the petitioner can not even argue that he has no concern with the company as such. Although, the counsel for the petitioner has argued that the petitioner was only an employee in the company, however, this is belied by the fact that documents placed on record by the petitioner himself show him as the share holder in the company. Otherwise also, the alleged letter of appointment, which is being relied upon by learned counsel for the petitioner, also shows that he was assured the return more than that which are meant for an employee. It is also mentioned in it that for any extra work contributed toward the company, the petitioner was to be compensated with extra remuneration. Hence, this indicates towards the culpability of the petitioner towards making extra effort for maximising the investment with the company. Accordingly, as has come in the Order of the Additional Sessions Judge, the petitioner is shown to have received an amount of about Rs.1.65 crores, under his own signatures; and is alleged to have issued receipt for the same. Therefore, the direct and positive involvement of the petitioner, prima facie, can not be ruled out at this stage.

Although learned counsel for the petitioner has submitted that the petitioner had resigned from the company way back in the year, 2015, however, this fact is totally irrelevant. The alleged fraud by collecting the amounts from the general public is stated to have happened between the year 2013 and before the year 2015 only. Still further, this fact that name of the petitioner is not mentioned in the FIR, is also immaterial because his role is alleged to have surfaced during the investigation. It deserves to be noted here that complainant in this case has espoused only his cause qua the persons with whom he might have come into contact while he was being defrauded. There are so many other persons who also have alleged to have been defrauded in the similar manner. Therefore, the fact that the present complainant has not named the petitioner as such; would not be of any help to the petitioner, whose role is otherwise, decypherable from the record of the company.

In view of the above, this Court does not find any mitigating circumstances in favour of the petitioner, showing, ex-facie, innocence of the petitioner vis-a-vis, the allegations levelled against him. Still further, since the offence involved in the case is sophisticated and formatted crime, by way of corporation of the company and swindling the amount collected in the name of the company, it is only the petitioner and his co-accused who can disclose the facts and who can lead to the recovery of the documents, in case of proper investigation by the police. Therefore, if the petitioner is granted protection at this stage, the same would hamper the free and fair investigation by the police, as well.

In view of the above, finding no merit in the petition, the same is dismissed.

22nd July, 2019 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*