IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.32407 of 2019 (O&M)
Decided on: 27.08.2019

Rajesh Malhotra

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. S.K. Agnihotri, Advocate
Mr. S.K. Mishra, Advocate and
Mr. Sunil Kumar, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. Abhilaksh Grover, Advocate
and Mr. M.S. Nagar, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of anticipatory bail to the petitioner under Section 438 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.011 dated 15.01.2019, for offence punishable under Sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code (in short 'IPC') registered at Police Station Sector 31, Faridabad.

Counsel for the petitioner has submitted that as per the allegations in the FIR, registered on the complaint of Anshu Mehra, against the present petitioner Rajesh Malhotra and 11 other accused, it is stated that the complainant company has made investment of public in the shape of FDRs and the petitioner, being an old employee of the company and was working as a Joint Manager Secretarial, was given the powers and responsibilities of complete control over the fixed deposit money, which was collected by the complainant company from the public to repay it alongwith interest. It is further stated that the accused Rajesh Malhotra had the IDs and passwords of fixed deposit software of the company. On receiving a complaint from one of the depositor Prem Parkash, who approached the company for maturity of his FDRs as he had deposited over Rs.40 lacs, it was found that no such fixed deposit is in the record of the company. It is also stated that the petitioner has fraudulently removed the names of the genuine F.D. holders or the investors and has transferred the money by way of the a cheque in the name of his relatives and friends, who are the co-accused and has embezzled a huge amount of Rs.73.37 lacs. It is further stated in the FIR that the petitioner had admitted that an amount of Rs.53.55 lacs was siphoned off by the petitioner. In the complaint, the details of the cheating, fabrication of the record done by the petitioner while transferring the amount in favour of other co-accused are given along with the supporting documents.

Counsel for the petitioner has argued that the victims named in the FIR have never invested in the company and no fraud has been committed by the petitioner Rajesh Malhotra and the amount already stands withdrawn. It is further submitted that in the anticipatory bail application filed by the co-accused, interim relief has been granted on an undertaking given by all the 10 co-accused of the petitioner that they will deposit 50% of the amount which was transferred by the petitioner in their account, instantly and will deposit the remaining amount after some time.

Counsel for the State, on instructions from the Investigating Officer, has however opposed the prayer for bail and has placed on record the minutes of meeting dated 04.10.2018 which is duly signed by the petitioner and the complainant along with a statement of account vide which the petitioner has admitted that there is a difference of Rs.53.55 lacs as per the books of accounts and as per the statement of account it was found that the fixed deposit of victims were not available in the books of accounts as on 31.03.2018.

Counsel for the complainant has argued that the petitioner is the main accused who has deliberately committed the offence of chearing, forgery and fraud as the petitioner being the Joint Manager Secretarial was having the IDs and passwords of the company account and has created fake FDRs and has transferred the amount in the name of the co-accused, who while filing their petitions straightway made a declaration that they are ready to deposit the entire amount and in fact, 50% of the respective amount is deposited in the FDRs with the Illaqa Magistrate and this Court has granted time to deposit the remaining amount with the Illaqa Magistrate.

Counsel for the complainant has further submitted that this also demonstrates the conduct of the petitioner that he is illegally transferred the aforesaid amount in the name of the co-accused.

It is worth noticing that while issuing notice of motion in 03 other connection matters, the present petitioner was also granted the concession of the interim bail subject to deposit of 50% of the amount. The complainant has also moved an application i.e. CRM No.25208 of

2019 for seeking correction in the order as the allegations against the petitioner are different than the co-accused as the petitioner is the main accused who has deposited the amount in the account of other co-accused whereas no amount was deposited in the account of the petitioner and he himself committed the offence of cheating, fraud and forgery and therefore, it is prayed that the order dated 19.08.2019 granting interim protection be vacated.

In reply to this application, counsel for the petitioner has fairly admitted that no such direction was issued on 19.08.2019 and inadvertently, the interim protection was granted to the petitioner, though as the allegations against him are on different footing viz-a-viz, the other co-accused.

After hearing the counsel for the parties, I find no ground to grant anticipatory bail to the petitioner. The documentary evidence produced by the complainant show that the petitioner was working as Joint Manager Secretarial in the company and he was in possession of the IDs and passwords of FDR amount of the company. The complainant has also produced on record the statement of account showing that an amount of Rs.53.55 lacs was transferred by the petitioner in the account of his relatives and friends i.e. the co-accused, in whose anticipatory bail petition, a declaration is given before the Court that they are ready to deposit back the amount and all of them have already deposited 50% of the amount with the Illaqa Magistrate in the shape of FDRs and they have further given undertaking to deposit the balance amount for which time has been granted. This declaration of the co-accused further strengthen the case of the complainant that the amount transferred in their account by the petitioner was in fact, not transferred in a legal manner and was an outcome of the fraud played with the complainant company. Even otherwise, counsel for the petitioner failed to explain any reasons to discard the minutes of meeting dated 04.10.2018 and the statement of the accounts, which are duly signed and acknowledged by the petitioner along with the other office bearers of the company wherein it is found that a difference of Rs.53.55 lacs is there as per the books of accounts and the prosecution has collected sufficient evidence that the petitioner has siphoned off this amount in an illegal manner in the account of the co-accused, with an intention to cheat the company.

In view of the above, considering the serious allegations against the petitioner, I do not find any ground to grant the concession of anticipatory bail to the petitioner.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

27.08.2019
yakub

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No