IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-46924 of 2019
Date of Decision:-09.12.2019

RAKESH KUMAR VATS

.....Petitioner

V/S

STATE OF HARYANA AND ANR.

.......Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Sangram Singh Saron, Advocate
for the petitioner.

Mr. Deepak Shabarwal, Addl. A.G. Haryana and
Mr. Arjun Singh Yadav, Asst.AG Haryana
for respondent No. 1-State.

Mr. Gautam Diwan, Advocate
for the complainant.

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ARUN KUMAR TYAGI,J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') seeking grant of anticipatory bail in case FIR No. 0475 dated 26.07.2017 registered under Sections 408 and 420 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station DLF-II, Gurugram.

Vide order dated 16.11.2019 while issuing notice of motion complainant was ordered to be impleaded as respondent No. 2.

On 05.12.2019 learned State Counsel filed reply on behalf of respondent No. 1 while learned Counsel for respondent No. 2 sought time to file reply. Today learned Counsel for the respondent No. 2 has adopted the reply filed by respondent No. 1.

I have heard learned Counsel for the petitioner, learned State Counsel and learned Counsel for the complainant and perused the relevant record.

Learned Counsel for the petitioner has argued that the petitioner is claimed by respondent No. 2 to be posted as Regional Manager of Pro-Align Security India Private Limited Company but no document in this regard has been placed on record by the complainant. The petitioner initially posted as Cluster Manager was promoted as Deputy Manager Security. The petitioner mainly looked after interview and selection of Security Guards and also resolved some of the complaints marked to him. The petitioner was not responsible for verifying the documents and attendance of the guards, distribution of salary to them or issuance of PDC ATM cards for distribution of salary to them. Mr. Ajay Kumar was responsible for documentation in respect of Security Guards. Mr. Dinesh Kumar used to issue PDC ATM cards to the Security Guards. Mr. Kuldip Singh, working in Pay Roll department, used to disburse salary of the Security Guards. The petitioner had nothing to do with these aspects. The above said three persons have not been joined in investigation so far. There is no allegation against the petitioner regarding committing of offence of forgery in respect of any document. The petitioner is alleged to have committed offences punishable under Sections 408 and 420 of the IPC which are punishable with maximum imprisonment of 7 years and the observations made in ***Arnesh Kumar Vs. State of Bihar: 2014(3) RCR (Criminal) 527*** are applicable to his case. Respondent No. 1 has not placed on record any document recording reasons in terms of Section 41(B) of the Cr.P.C regarding arrest of the petitioner. FIR was registered on 26.07.2017 and as per the reply filed by respondent No. 1

only statements of two witnesses have been recorded during investigation. The offences alleged to have been committed by the petitioner are to be proved by documentary evidence which is already available with the above said company and can be procured by respondent No. 1 by proper investigation of the matter. No document is in possession of the petitioner and he has not unauthorizedly withdrawn any money. No recovery is to be made from the petitioner and petitioner is ready to join the investigation. Therefore the petitioner may be granted anticipatory bail.

On the other hand learned State Counsel assisted by learned Counsel for the complainant has argued that the petitioner was Regional Manager Security entrusted with the duties of recruiting Security Guards, recording of their attendance and distributing salary to them as per attendance record, collecting documents, opening employee account with the Company and sorting out issues with regard to security in the Company's client premises. The petitioner fabricated and created forged attendance records of the permanent employees/contractual employees who were no longer associated with the above said Company and were not physically present for work and fraudulently drew their salary from the above said Company by using their PDC ATM Cards. During investigation electronic evidence has been collected which shows that the petitioner has withdrawn money from ATM by using PDC ATM cards of Pankaj Sharma and Kiran Devi who were never employed in the services of the above said Company and Amrinder and Kunal who were on leave and their salary was withdrawn by forging their attendance for the leave period. The modus operandi continued in 2015 and the petitioner had criminally misappropriated amount of Rs.30 lacs. Recovery of the documents in respect of the Security Guards whose PDC ATM cards were used for fraudulent withdrawal of money and the amount criminally misappropriated is to be made from the petitioner. Custodial interrogation of the petitioner is required for thorough investigation of the case. The petitioner does not deserve grant of anticipatory bail. Therefore the petition may be dismissed.

The Courts have been granted power to grant anticipatory bail to protect against motivated criminal litigation instituted at the instance of

unscrupulous litigants animated by malice or political vendetta. Grant of anticipatory bail is an extra-ordinary remedy and is not, therefore, intended to be granted in every case. Number of factors including nature and gravity of the offences, quantum of sentence, likelihood of the accused absconding, intimidating or influencing the witnesses or tempering with the evidence or committing similar offences have to be taken into consideration.

In the present case the petitioner is alleged to have unauthorisedly withdrawn salary of Security Guards by fraudulently using their PDC ATM Cards by forging record regarding their attendance. No doubt the offences alleged to have been committed by the petitioner are punishable with maximum imprisonment of 7 years so as to attract the observations in ***Arnesh Kumar Vs. State of Bihar: 2014(3) RCR (Criminal) 527*** but Hon'ble Supreme Court has not completely prohibited arrest of offenders in such cases and the reasons for arrest have to be recorded at the time of arrest and produced before the Judicial Magistrate Ist Class at the time of remand to custody and will not be required to be recorded and produced at the time of decision of the anticipatory bail application filed on the basis of apprehension of arrest in non-bailable case.

In view of the facts and circumstances of the case, gravity of the offences, the fact that custodial interrogation of the petitioner is necessary for recovery of documents and PDC ATM Cards used and the amount of money criminally misappropriated, the conduct of the petitioner who did not join investigation despite issuance of notices to him and evaded the process for long period, chances of the petitioner tampering with evidence, influencing or intimidating witnesses and absconding from justice, I am of the considered view that the petitioner does not deserve the grant of extraordinary relief of anticipatory bail. Therefore the petition is dismissed.

09.12.2019 **(ARUN KUMAR TYAGI)**
Rajeev (rvs) **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No