IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46600-2019(O&M)
Date of decision: 15.11.2019

Kapil Sharma

.......Petitioner

Versus

State of Haryana

......Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arvind Pal Singh, Advocate for the petitioner

Mr. Anmol Malik, AAG, Haryana

Mr. Ajit Sihag, Advocate for complainant

ANIL KSHETARPAL, J. (ORAL)

Reply by way of affidavit of Ashok Kumar, IPS, Deputy Superintendent of Police, Hisar has been filed. A copy thereof has been supplied to the counsel opposite.

Petitioner prays for bail pending trial in criminal case arising from FIR No. 294 dated 9.4.2016 registered under Sections 406, 420, 35, 119, 120-B, 166, 166-A, 177, 187, 188, 217, 218, 219, 421, 423, 425, 426, 463, 464, 465, 466, 467, 468, 471, 477-A, 174-A IPC at Police Station City Hisar, District Hisar.

Facts of the case noticed by the learned Court of Sessions are extracted as under:-

> "The complainant in his complaint stated that the above named persons are wrongly and knowingly abusing their position as public servants to gain undue

advantage to themselves and their family members by corrupt practices and harming the complainant and other depositors of the society. He also stated that the accused are actuated with corrupt motive and are guilty of corruption and are in possession of property disproportionate to their known sources. They are deliberately not taking any action and there is complete lack of integrity and Maladministration on their part. The complainant submitted that Ashish above-said though is Secretary of the society but de-facto he is owner of it and running the society as his own ownership. Father of Ashish who was clerk in Bank of India started this society in the year 1980 after taking Registration No.56 dated 31.12.1979. Ashish and his father were able to win the confidence of the creditors and depositors in the society as they represented to the depositors that they will return the amount with half yearly compound interest @ 12% to 15%. The society started doing roaring business and got deposit of Rs. 3 crores to 8 crores. Father of Ashish expired in 2009 and to run the society Ashish associated with him his close friend Kapil son of Ram Narain of Hisar i.e present petitioner and confidant Barkha daughter of Charan Dass, resident of Vijay Nagar, Hisar and with their help in order to pocket money by showing fake salaries and other expenses, raised three more SETC (Salaries Employees Thrift & Credit) societies namely " Jai Luxmi", "All Employees" and "Hisar City" to siphon off money from the first society (started by Ashish and his father). The unlawful misappropriation of creditors money started during the life time of father of Ashish and after the death of his father these three accelerated it manifolds by purchasing landed property, luxury cars and gold jewellery and brought the 1st society to the brink of bankruptcy. The complainant is one such depositor who has deposited his hard earned money in the society to the tune of Rs.20,81,338/- and Rs.13,98,129/- in his own as well as in joint name of his mother on 30.9.2014 with interest till date extra. He has been demanding back his money from Ashish for the last two years but he kept putting off the matter on one pretext or the other and it out to wind up his business with the active support of Deputy Registrar, Assistant Registrar of the society and SHO, PS, City Hisar (accused No. 2, 3 and 4). He made complaint against the aforesaid persons but the aforesaid persons appeared to be hand in glove with Ashish and have taken no action. Various complaints have been moved by him to the aforesaid persons and SSP, Hisar but nothing concrete came out of that and, therefore, these aforesaid persons are not performing their duties in public interest. Upon it, offence under Sections 406/420 IPC was found to have been committed and investigation was started by

SI Mahender Singh thereafter, by SI Partap Singh and then ASI Partap Singh. The complainant presented the details of his account with the society run by Ashish. The other depositors also presented the details of the pass book and the amount deposited with the societies which was taken into police possession. Thereafter, investigations were carried out by ASI Ajay Kumar, who collected record from the office of Registrar and collected various sale deeds by virtue of which society purchased various immovable properties. Revenue record of the immovable property was also collected. Details of various plots which were purchased by aforesaid persons were collected. Similarly, the record from the Estate Officer, HUDA was collected. Details of Bank account numbers of the society were also collected and it was found out that Ashish aforesaid has made cash transaction of crores of rupees in his account. Details of Alisha real sister of Barkha Bhutani, co-accused having account No.914010045803564 in Axis Bank was also collected in which Rs. 2 lacs were found transferred. The bank account details were also collected. During further investigation offence under Sections 34 and 120-B IPC were added. Details of the account which was opened by the depositors with the society were also collected. The accused were also found to have prepared false record and they were found to have misused their official posts whereupon offence under Sections 35, 119, 120-B, 166, 166-A, 177, 187, 188, 217, 218, 219, 421, 423, 425, 426, 463, 464, 465, 466, 467, 468, 471, 477-A IPC were added. During investigation, it was also found out that four societies were being run from the same office. Barkha Bhutani further disclosed the name of other employees who were working alongwith her in the society. She disclosed that she got opened account 913010023876015 in Axis Bank at the behest of Ashish and Kapil her companions and in that account lacs of rupees used to be deposited every month. She used to withdraw the amount through cheques and sometimes by vouchers from that account. Some of the abovesaid amount she has spend on her marriage. Rupees two lacs she had transferred in the account of her younger sister Alisha. Rs. 1,65,000/- had been deposited by her in State Bank of India in the shape of FDR. During investigation, a car bearing no.HR26AS/0015 make Honda Civic allegedly purchased by the present petitioner from the embezzled amount of the society was recovered. Rs.20,000/- were also recovered from the possession of present petitioner. Challan against the accused persons was presented in the Court."

Learned counsel for the petitioner contends that petitioner is neither office bearer of the Society nor he has any connection. He further submits that the petitioner is in custody for a period of almost 4 months and case is triable by Magistrate. Investigations are complete. Police report as required under Section 173 Cr.P.C has been filed.

On the other hand, learned counsel for the State duly assisted by the counsel for the first informant has submitted that as many as 12 complaints have been received and an amount of approximately Rs.10 crores has been swindled. It has further been pointed out that during investigation it has been found that the petitioner has purchased three constructed houses in the name of his mother, father and his own name during the period from 13.4.2009 to 18.1.2012 for an amount of Rs.3 crores approximately which is beyond his disclosed sources of income. It has further been pointed out that petitioner was declared proclaimed offender and remained absconder from law for more than a year.

In view of the above facts, this Court is not inclined to grant concession of regular bail to the petitioner.

Hence, dismissed.

15.11. 2019 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned Yes / No
Whether Reportable Yes / No