IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.53606 of 2019 (O&M)
DATE OF DECISION : 16th DECEMBER, 2019

Mahima Thakkar & another

…. Petitioners

Versus

State of Punjab

…. Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate for the petitioners.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioners under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.182 dated 17.11.2019 registered under Sections 420, 408 & 120-B IPC (Sections 201, 465, 467, 468, 471, 120-B IPC, added later on) at Police Station Division No.6, District Jalandhar.

The FIR in the case came into being on the statement of one Arun Cheriyan, Regional Manager, Kalyan Jewellers India Pvt. Ltd. Corporate Office, Punkunnam, Thrissur Kerala, in which it was stated that he had come on a routine inspection visit to Jalandhar showroom of the company. During the checking, it was found that the jewellery items worth rupees six corers were missing from the stock. No satisfactory record or corresponding invoices were found entered in the account books of the company. On enquiry by him, staff of the showroom had even admitted qua misappropriation of the items and involvement of the Manager of the showroom. On further looking into the account, it came out that the petitioners had visited the said showroom on the dates specified in the complaint. They were shown having purchased certain items, however, even the sufficient payments for those items were not entered in the company's records. Hence, it was alleged by the complainant that he had a strong suspicion that the petitioners, the Manager of the showroom and the employees posted at the showroom have colluded for misappropriation of the jewellery worth rupees six crores; by fabricating the records; and thereby; have cheated the company.

While arguing the case, learned senior counsel for the petitioners submits that the petitioners were to get married at about the same time. Therefore, they had purchased the jewellery from the said showroom. Whatever they had purchased; that is duly reflected in the respective invoices issued to the petitioners by the showroom of the company. Still further, it is submitted that even if the amount of all the invoices, through which the petitioners have purchased the jewellery, are added, that does not carry the value of jewellery worth rupees six crores. Still further it is submitted that except suspicion expressed by the complainant, there is no evidence qua the petitioners.

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 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.

Coming to the facts of the present case, this court finds that the allegations against the petitioners are qua the conspiracy and collusion with the Manager of the showroom and the employees thereof, so as to cheat the company by creating false records. Although the counsel for the petitioners has submitted that the petitioners have purchased the jewellery and they were even issued the invoices therefore, however, this court finds that even the said invoices, show selling the jewellery to the petitioners worth lacs of rupees, however, the net payable amount to the company is shown only rupee one or rupees two. Hence, the issuance of the invoices itself appears to be suspicious. Although the petitioners claimed to have exchanged some old jewellery; for the new jewellery, however, no details of old jewellery are discernible from the record or from the invoices through which the old jewellery was returned and the new jewellery was purchased by the petitioners. Hence, this court does not find any mitigating circumstances in favour of the petitioners, showing, ex-facie, their innocence, vis-à-vis the allegations levelled against them. Still further, the allegation is that jewellery items have been taken away in collusion with the manager and the staff of the jewellery showroom. Therefore, the police may even require to recover the said jewellery items. Hence, if the petitioners are protected against their arrest at this stage, then the same may hamper the free and fair investigation on the part of the police.

Accordingly, this court is not inclined to exercise the extraordinary power under Section 438 Cr.P.C., to grant anticipatory bail to the petitioners and to protect them against their arrest.

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

16th DECEMBER, 2019 **(RAJBIR SEHRAWAT)**
'raj' **JUDGE**

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No