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

*203*

***CRM-M No.18088 of 2020 (O&M)***
**DATE OF DECISION : 27th JULY, 2020**

**Ramesh Kumar**

**…. Petitioner**

**Versus**

**State of Punjab**

**…. Respondent**

***203-2***

***CRM-M No.19780 of 2020***

**Tara Chand**

**…. Petitioner**

**Versus**

**State of Punjab**

**…. Respondent**

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

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**In virtual Court**
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Present: Mr. Paramjit Singh Jammu, Advocate
for petitioner – Ramesh Kumar.

Mr. Kartar Singh, Advocate
For petitioner – Tara Chand.

Mr. Rakeshinder Sidhu, AAG, Punjab.

Mr. Animesh Sharma, Advocate for the complainant.

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**RAJBIR SEHRAWAT, J. (Oral)**

**CRM-17748-2020 in CRM-M No.18088 of 2020**

This application has been filed by the petitioner under Section 482 Cr.P.C. for placing on record Annexures P-9 & P-10.

The application is allowed as prayed for and Annexures P-9 & P-10 are taken on record subject to all just exceptions.

**CRM-17728-2020 in CRM-M No.18088 of 2020**

This application has been filed by the counsel for the complainant under Section 482 Cr.P.C. for placing on record reply.

The application is allowed and reply filed by the complainant is taken on record.

**CRM-M No.18088 of 2020 (O&M) & CRM- M No.19780 of 2020**

1. This order shall dispose of two petitions, namely, ***CRM-M No. 18088 of 2020*** filed by the petitioner-Ramesh Kumar and ***CRM- M No.19780 of 2020*** filed by the petitioner-Tara Chand, which have been filed by them under Section 438 Cr.P.C for grant of anticipatory/pre-arrest bail in case FIR No.152 dated 08.07.2018 registered under Sections 420 & 120-B IPC at Police Station Tripuri, District Patiala.

2. The allegations against the petitioners, in brief are that the petitioner-Tara Chand, along with some other persons had created a company namely, Bharti Energy Bottling Pvt. Ltd. and the company claimed itself to be the authorized distributor of another company, namely, Super Gas Agency. The complainant was interested to enter into the business of the Gas agency, therefore, he also started a gas agency in the name of Paul Gas Agencies. Assuring the complainant that the company of petitioner-Tara Chand would supply gas cylinders to the agency of the complainant, the complainant was asked to deposit money in the account of Bharti Energy Bottling Pvt. Limited. Accordingly, the complainant deposited an amount of ₹50,00,000/-, through RTGS transactions. This amount of ₹50,00,000/- was taken as security for

supply of gas cylinders. However, after some time the company of petitioner-Tara Chand stopped supplying cylinders to the agency of the complainant. Ultimately, they flatly refused any supply. The complainant demanded money of security amount back from the company of petitioner-Tara Chand. However they denied even the return of the security amount. It is further the case of the complainant that the original stockiest/supplying agreement was with another firm Bharti Gas Agency, which is the proprietorship of the second petitioner-Ramesh Kumar. It is on asking of Ramesh Kumar only, that the money was deposited in the account of the company of petitioner-Tara Chand. The petitioner-Ramesh Kumar had sent specific e-mails asking the complainant to deposit the money in the account of the company of petitioner-Tara Chand. Hence, even the second petitioner-Ramesh Kumar is also involved. A request was made to Ramesh Kumar also; to return the money to the complainant. However, even he denied. It is further submitted that Ramesh Kumar and Tara Chand both are real brothers. They are one and the same thing, although they are running business by creating different entities just to befool the public. When the complainant repeatedly demanded his money back, then both the petitioners agreed to execute an agreement to sell qua one of their property in favour of the complainant. For that purpose another amount of ₹10,00,000/- was paid to the petitioners through RTGS as part of sale consideration in addition to the amounts already paid to the petitioners. However, subsequently even that property was not sold to the complainant. The said property was in the name of petitioner-Tara Chand and his one more brother Om Parkash. Instead of selling that property to the complainant, the said property was sold to somebody else. Hence, both the brothers, Ramesh Kumar and Tara Chand have cheated the complainant and put him to a loss of ₹50,00,000/-; which was paid to them on account of security for supply of gas cylinders. Hence, the present FIR has been registered at the instance of the complainant.

3. Arguing the case, the counsel for the petitioner-Tara Chand, has submitted that the petitioner was not an active Director of the company Bharti Energy Bottling Pvt. Limited. The other Directors were two other persons, namely Satya Narain Gupta and Balbir Chand, who are his friends. It is further submitted that the money received by Bharti Energy Bottling Pvt. Limited was sent to the firm of the other petitioner-Ramesh Kumar, namely, Bharti Gas Agency; for supply of the gas and the kits to the company of the petitioner-Tara Chand. However, no such material was supplied by the proprietorship firm of Ramesh Kumar. Hence, petitioner-Tara Chand has not committed any offence as such. It is further submitted that the petitioner-Tara Chand has returned an amount of ₹10,00,000/- to the complainant on 03.03.2016 and ₹66,666/- on 05.03.2016 through RTGS. Besides this, petitioner had also paid an amount of ₹6,00,000/- in cash to the complainant. The petitioner was having only $1/3^{rd}$ share in company Bharti Energy Bottling Pvt. Limited, therefore, he was liable for $1/3^{rd}$ share of the money received by the company from the complainant. This money has been returned by him to the complainant. Hence, neither the petitioner is involved in this crime, nor he has to pay anything more to the complainant.

4. Learned counsel for the petitioner-Ramesh Kumar has submitted that the petitioner is not liable to the complainant in any

manner. The complainant had not paid any amount in the account of the petitioner or his proprietorship firm. So far as the money paid to his firm by the Bharti Energy Bottling Pvt. Limited, is concerned, it is submitted by the counsel that this money was received by his firm because he had supplied 3500 gas kits to Bharti Energy Bottling Pvt. Limited. Hence, this money was received as consideration for the goods validly sold by his firm to Bharti Energy Bottling Pvt. Limited, i.e., to the company of the other petitioner-Tara Chand. It is further submitted that the same amount paid through RTGS is being used by the complainant at three different places, namely, in the present FIR; in another FIR and also in agreement to sell. The petitioner-Ramesh Kumar or his firm does not have any direct connection with the complainant, as such, qua the transactions involved in the present FIR.

5. Learned counsel for the State, being instructed by ASI Kulvinder Singh, has submitted that both the brothers/petitioners have clearly connived and committed a fraud upon the complainant. Undisputedly, the money has been taken from the complainant as security. Although, the business with the complainant stands terminated by the petitioners, yet the security amount has not been refunded by the petitioners to the complainant. On receipt of the complaint, the FIR has been registered by the police. The police are required to recover the documents relating to the transactions between the parties, as well as, the amount of money, allegedly embezzled by the petitioners. Hence, the custodial interrogation of the petitioners is must in this case. It is also pointed out that besides the present case, there are two more cases pending against the present petitioners. To point out the fraud committed

by the petitioners, the State counsel has submitted that although petitioner-Ramesh Kumar claimed to be super stockiest of Super Gas Agency and through his brother Tara Chand entered into an agreement with the complainant to supply the gas/kits, however, Ramesh Kumar or his firm itself was not authorized to supply gas in the area of Patiala, where the complainant was working. Their license of distributorship itself was restricted to District Sirsa. Hence, it is a clear-cut case of fraud.

6. In the same line, the counsel for the complainant has submitted that the complainant was first allured by Ramesh Kumar. He represented himself to be a Super Stockiest of the gas companies, namely Prachi Gas Agency and Super Gas and represented that he has the authority to supply in the area of Patiala as well. Accordingly the agreement was originally with the firm of Ramesh Kumar. Through the correspondence and e-mails, it is the petitioner-Ramesh Kumar; who asked the complainant to deposit the money in the account of the company of his brother Tara Chand. Accordingly, the money was deposited in the account of the company of Tara Chand. This understanding between two brothers, the petitioners, also shows that they are acting in connivance and in tandem with each other. Not only this, after stopping the supply of the gas to the complainant, when he demanded his security back, the petitioners refused altogether in the first instance. However, subsequently they devised another methodology to further cheat the complainant. They entered into an agreement to sell a piece of land; which was jointly in the name of petitioner-Tara Chand and their third brother Om Parkash. For that purpose even further

amount of ₹10,00,000/- was demanded by them, which was duly paid by the complainant, through RTGS. Therefore, the sequence of facts clearly shows that the petitioners had fraudulent intentions right from the beginning. That fraudulent fiber continues throughout their all transactions and continues even up to the date of agreement to sell when a further amount was demanded and received by them from the complainant. But for the fraudulent intentions, the petitioners do not have any excuse not to refund the security, when they have already stopped the supply of goods as per the terms of the agreement.

7. No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance /interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

8. Coming to the fact of the present case, it is not even disputed that the petitioners had started business of providing supply of Gas and also providing further agencies for gas supply. It is also not disputed that, at least, an amount of ₹50,00,000/- has been received from the complainant, through RTGS, as security for business transactions. There is not even dispute between the parties that for some time there had been some supplies of the gas, but subsequently the same was stopped. There is no dispute regarding any money of any transaction in between. Accordingly, the dispute is only for that amount, which was paid by the complainant as security for obtaining the agency from the petitioners. Once that business is stopped, for any reason whatsoever, the complainant, obviously, would be entitled to get back his security amount. However, instead of businessman like behavior, the petitioners have, allegedly, not only refused to return the money of the complainant, rather, they have indulged in further machinations for extracting more money from the complainant. For that purpose, the complainant was allured into an agreement to sell a piece of land in his favour and for that further amount of ₹10,00,000/- was received from him through RTGS. However, even from that agreement, the petitioner-Tara Chand backed out and subsequently sold that land to some other party. It is a different matter that the petitioner-Tara Chand claims to have subsequently returned the amount of ₹10,00,000/-, through RTGS, to the complainant and the complainant has not even disputed that. However, the petitioner-Tara Chand also claims to have paid an amount of more than rupees 6 lacs in cash; for which he has not been able to show any document; as such.

9. The fraudulent aspect of the matter is made more obvious by the fact that the petitioner-Ramesh Kumar is taking a stand that he had received ₹50,00,000/- from the company of his brother Tara Chand for supply of gas kits to the company of his brother Tara Chand, whereas, on the other hand, Tara Chand has submitted that although the entire amount was paid by his company to Ramesh Kumar, however, no gas kits were supplied by him to the company of Tara Chand. Therefore, both these brothers have been taking contradictory stand, as well as, collusive stand; from time to time. Not only this, although, petitioner-Ramesh Kumar is taking a stand that he does not have any direct connection with the business of the complainant qua this amount of ₹50,00,000/-, however, the record shows that the complainant was asked by Ramesh Kumar only to deposit this amount in the account of the company of his brother Tara Chand and accordingly the amount was deposited by the complainant. Furthermore; counsel for the State has also pointed out that the petitioner-Ramesh Kumar was not even authorized to further distribute the Gas agencies in the area of Patiala. His authorization was restricted to District Sirsa in Haryana only.

10. In view of the above circumstances and allegations, this court does not find any *ex facie* innocence on the part of the petitioners vis-à-vis the allegations levelled against them. Still further, the transactions between the parties involved intricate details of documents and payments. Therefore, this court finds substance in the argument of the counsel for the State that the police would be required to make recovery of the documents and the money involved in the case.

Therefore, in view of this court, granting any protection to the petitioners would also hamper the free and fair investigation by the police.

11. In view of the above, but without commenting anything more on merits of the case, the present petition is dismissed.

12. However, nothing said hereinabove would affect the merits of the case during the trial, if any.

**27th JULY, 2020**
*'raj'*

**(RAJBIR SEHRAWAT)**
**JUDGE**

*Whether speaking/reasoned: Yes No*

*Whether Reportable: Yes No*