IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18177-2020 (O&M)
Date of decision: 28.08.2020

Ghanshyam Pandit & another ...Petitioners

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Aashish Chopra, Advocate
for the applicants-petitioners.

Mr. Sumit Jain, Addl. A.G., Haryana.

ARVIND SINGH SANGWAN, J. *(Oral)*

CRMs-21180 & 21181-2020

Allowed as prayed for.

Documents are taken on record as Annexures P-11 to P-14.

Main case

Prayer in this petition is for grant of anticipatory bail to the petitioners in FIR No. 0121 dated 18.02.2020, registered under Sections 34, 419, 420, 467, 468 and 471 of the IPC at Police Station Ballabhgarh City, Faridabad.

The order dated 13.07.2020, vide which the arrest of the petitioners has been stayed, is reproduced below:

> "Counsel for the petitioners has argued that as per the allegations in the FIR, the victim – Nanak Chand is defrauded of Rs.41.20 lacs, by way of RTGS transferred in favour of Reliance Retail Limited (Reliance Jewels), Noida (U.P.), i.e. the store from where the accused persons namely Parveen Goyal, Joginder Gupta and Tarun Gupta

had purchased gold items against the said amount which never belong to them.

Counsel for the petitioners has further submitted that initially a complaint was given by the Chief Manager of Sarva Haryana Gramin Bank, Ballabgarh (the complainant) where the victim Nanak Chand had an account. It is further submitted that during the investigation, the police has arrested the aforesaid persons and recovered 850 gms of gold from Parveen and 150 gms of gold from another accused whereas the Reliance Retail Limited (Reliance Jewels), has sold only 950 gms of gold against the aforesaid amount, which was transferred with the Reliance Retail Limited (Reliance Jewels).

Counsel for the State has not disputed the factual position that on account of transfer of the amount from the account of the victim Nanak Chand, the other accused have purchased the gold items. It is further submitted that as per the CCTV footage, the accused persons were found in committing the offence and on the invoice prepared by the Reliance Retail Limited (Reliance Jewels), the signatures of these persons were not found and these are the signatures of other persons. It is also submitted that while selling the items, the identity of the persons (the other accused persons) who have purchased the gold was never verified by the Reliance Retail Limited (Reliance Jewels).

On a Court query, whether the owner or the person (s) authorized to manage the account of Reliance Retail Limited (Reliance Jewels), are arrayed as an accused in this case and the amount of Rs.41.20 lacs which belong to a poor victim i.e. Nanak Chand is still with the Reliance Retail Limited (Reliance Jewels) or returned, counsel for the petitioners, replied that since the gold coins have been recovered which is in possession of the police, no grievance of the victim Nanak Chand, is left.

After hearing the counsel for the parties, I do not agree with the arguments raised by counsel for the petitioners that the interest of the victim has been safeguarded. In fact, the victim's hard-earned money has been siphoned off in a fraudulent manner and has been transferred in favour of Reliance Retail Limited (Reliance Jewels), which is returned back to him or to the Sarva Haryana Gramin Bank, Ballabgarh, from where the amount was transferred in the account of Reliance Retail Limited (Reliance Jewels), on account of sale of the gold coins in favour of the other accused persons.

As per the State counsel, during the enquiry, it is found that the invoice is issued by the Reliance Retail Limited (Reliance Jewels), were not signed by the accused persons and it was signed by some other person(s), which show sheer negligence on the part of the Reliance Retail Limited (Reliance Jewels).

List again on 28.08.2020.

In the meantime, the Commissioner of Police, Faridabad is directed to immediately issue a notice to the owner/competent person of the Reliance Retail Limited (Reliance Jewels), informing as to why the amount has not been returned so far and in case, the amount is not returned within a period of 15 days from the date of issuance of the notice, why they should not be arrayed as accused in the present FIR, as the petitioners, actively on their behalf, have committed the offence, in conspiracy with the other accused persons, a fact which is to be decided during the course of trial.

It may also be clarified in the notice that on return of the amount to Nanak Chand, the gold which was sold by the Reliance Retail Limited (Reliance Jewels), to the co-accused and was later on recovered from them and

> presently is in custody of the police, be also returned to Reliance Retail Limited (Reliance Jewels).
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> Till the next date of hearing, the arrest of the petitioners shall remain stayed."

Learned counsel for the petitioners submits that petitioners, on behalf of Reliance Retail Limited (Reliance Jewels), have already got prepared a demand draft of Rs. 41,20,000/- in favour of victim Nanak Chand so as to return him the amount.

Learned counsel for the petitioner further submits that petitioners are ready to join investigation.

Reply, filed by way of affidavit of Assistant Commissioner of Police, is already on record and as per same, the invoices prepared by Reliance Retail Limited (Reliance Jewels) were without any signature and while selling the item, identity of the persons (other than petitioners), who have purchased the gold, was never verified and, therefore, the petitioners be directed to join investigation.

It is further stated in the said affidavit that complainant-bank has already transferred a sum of Rs. 46,47,000/- in the account of victim Nanak Chand and the bank has also moved an application for taking gold and cash on superdari before the trial Court and the trial Court is seized of the matter and has issued notice to persons concerned.

Learned State counsel submits that since the matter is subjudice before the trial Court and the victim has been compensated immediately in pursuance to the order passed by this Court, the petition may be disposed of granting liberty to petitioners to approach trial Court by moving appropriate application for taking gold and cash on superdari as has been moved by the bank and the trial Court shall decide the same on merits.

Accordingly, the present petition is allowed. Interim order dated 13.07.2020 is made absolute and the petitioners are granted concession of anticipatory bail subject to the conditions envisaged under Section 438(2) Cr.P.C.

However, the petitioners are directed to appear before the Investigating Officer on 10.09.2020 at 10.00 AM and join investigation.

Since the victim has already been paid the amount by the complainant/bank, it will be open for the Reliance Retail Limited (Reliance Jewels) to cancel the aforesaid draft and hand over the amount to complainant-bank for taking gold on superdari, subject to verification by the Carat Meter which is available in the premises of Reliance Retail Limited (Reliance Jewels).

The trial Court will decide the application filed by the complainant-bank as well as Reliance Retail Limited (Reliance Jewels) by passing a joint order.

It is further clarified that notice issued by the police authorities in pursuance to order dated 13.07.2020 is rendered infructuous as the petitioners have been directed to join investigation.

28.08.2020 **(ARVIND SINGH SANGWAN)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*