IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.18525 of 2020
DATE OF DECISION : 14th JULY, 2020

Vishal Rameshbhai Gandhi

…. Petitioner

Versus

State of Haryana

…. Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present: Mr. Abhilaksh Grover, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory/pre-arrest bail in case FIR No.72 dated 15.05.2020 registered under Sections 406 & 420 IPC, at Police Station Sector-37, District Gurugram.

The allegations against the petitioner are that the complainant intended to procure a good quality of face masks for the business purpose on account of the prevalent Covid-19 situation. For that purpose she came in to contact with the present petitioner. The petitioner agreed to ensure the supply of the face masks to the complainant. The deal was agreed. Thereafter, the petitioner asked the complainant to meet one Ashish Kumar and to inspect the stock of the face masks at Delhi at the house of one Rajat Deep. To instill confidence in the complainant, a stock of face masks was shown to the complainant at the house of Rajat

Deep. On the stock having been verified by the complainant, the petitioner issued the bill from his own firm M/s. Rhythm Divine Healthcare. The bill having been raised by the present petitioner, the amount was deposited by the complainant in the account of the petitioner. Out of the total payments, an amount of ₹2,00,000/- was paid in the personal account of the petitioner, whereas an amount of ₹42,60,000/- was deposited in the account of his firm. However, subsequently the goods were not supplied to the complainant by the petitioner and his firm. Therefore, the complainant demanded her money back. But, even that was not done by the petitioner. As a result, the present FIR has been registered by the complainant.

One more fact which has happened during the interregnum is that the police had arrested the petitioner in connection with this case. However, at the time when police had sought remand of the petitioner, the Magistrate realized that the arresting officer had not complied with the conditions laid down in Section 41(1)(b)(ii) of the Cr.P.C. for arresting an accused. No valid reasons were recorded by the arresting officer. Hence, the arrest of the petitioner was set aside and he was ordered to be released.

Since there is an FIR against the petitioner containing allegations against him and once he had already been arrested by the police, though the said order has been set aside on technical reasons, yet the petitioner apprehended that police may arrest him once again. Apprehending his arrest, he approached the court of Additional Sessions Judge, Gurugram. However, the said application has been dismissed. Hence the present petition has been filed by the petitioner.

Arguing the case, learned counsel for the petitioner has submitted that the petitioner was not to supply the goods to the complainant. He was acting only as a middle-man. The goods were to be supplied by M/s. Rawdolate and company, which is concern of Ashish Kumar and Rajat Deep. In support of this argument learned counsel for the petitioner has submitted that on receipt of money from the complainant, the entire amount was transferred to the aforesaid firm of Ashish Kumar and Rajat Deep on the very next day. Hence, the petitioner has not committed any offence. He only introduced Ashish Kumar and Rajat Deep to the complainant. Since Ashish Kumar had asked him to receive the money in his own account, therefore, the petitioner had received the amount in the account of his firm. Beyond the amount of ₹4,00,000/- which was the commission of the petitioner, the petitioner has no concern with the matter at all. The counsel has further submitted that the petitioner is ready to return the amount of ₹4,00,000/- which he had taken as commission in the transaction. However, he has shown his disinclination for return of the entire amount which was received by him in his personal account and in the account of his firm/company.

Notice of motion.

Mr. Anmol Malik, DAG, Haryana accepts notice on behalf of the State and Ms. Supriya Arora, complainant appeared in persons and accepts notice.

Learned State counsel, being instructed by ASI Jai Bhagwan, has submitted that there are specific allegations against the petitioner. The plea of the petitioner that he was acting only as a middle-man for commission, is demolished by the very fact that the petitioner had issued invoice/bill to the complainant from his own firm. Even the money has been received by the petitioner in the account of his own firm; as well as in his personal account. Still further it is pointed out that the petitioner had allured the complainant into fraud; in collusion and conspiracy with his other friends Ashish Kumar and Rajat Deep. Since the matter pertains to the intricate details and transactions, therefore, the police would be required to recover the documents and the other material. For that purpose the custodial interrogation of the petitioner is required. Hence, the petitioner does not deserve any concession of anticipatory bail.

Similarly, the complainant has also submitted that, in fact, it was the petitioner who himself had represented to her that Ashish Kumar was his partner based at Delhi. To further instill the confidence into her, she was even referred to Ashish Kumar and Rajah at Delhi. She was even shown the material to be supplied to her. Thereafter, the petitioner himself issued invoice/bill from his own firm asking the complainant to pay the money to his firm. Accordingly, the money was paid to the petitioner, in the account of his firm; as well as; in his personal account. Since the transaction of the complainant was with the petitioner only, therefore, she asked the petitioner to ensure supply of the goods for which she had already paid. However, the petitioner started deferring the matter. Ultimately, the petitioner raised his hands by saying that he had transferred the money in the account of the firm of Ashish Kumar and Rajat Deep and that he was not responsible for any supply to her. When she demanded her money back, even that was denied by the petitioner.

Hence, the entire chain of facts and sequences, clearly establish that the petitioner had fraudulent intention right from the day one. He allured the complainant to make the payment; by creating a cobweb of facts and frauds. After having received the money his true intentions had become amply manifest. Realizing that she had been defrauded she again visited the house of Rajat Deep where she was shown the stock earlier. However, Ashish and Rajat Deep said that there was no material with them. They also said that complainant had never visited them earlier nor was she shown any stock by them. They also asserted that they did not know the petitioner. This made the fraud of the petitioner and his co-accused quite clear. As a result, the complainant has been put to loss of more than ₹44,00,000/- for which she is paying interest to the bank @ ₹40,000/- per month. All this has happened because of the fraud committed by the petitioner, in collusion and conspiracy with his co-accused.

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.

Coming to the fact of the present case, this court finds that there are specific allegations against the petitioner. The complainant has specifically alleged that it was the petitioner who agreed to supply her the goods; and in the process; referred her even to see the material. Not only this, the petitioner has received the entire money; either in his personal account; or in the account of his own firm. Where he transferred the money thereafter, can be his own concern and creation, which may have more than visible tentacles underneath that transaction. The fact remains that the petitioner raised invoice/bill for that material to be supplied to the complainant and has received the payment from the complainant in his own account. Therefore, it was the petitioner who had to supply the goods. He has not supplied the goods, rather, he has started denying any transaction itself; and has started claiming himself to be a middle-man only. This lends credence to the allegation of the complainant that the petitioner had a fraudulent intention right from the beginning. The fraud involved in the matter is further aggravated by the assertion of the complainant that after making the payment and the refusal of supplying the goods, she visited the place where she was earlier shown the stock of the goods, but then the entire stock was missing from that place. Not only the stock was missing, the aforesaid Ashish Kumar and Rajat Deep also started asserting that there was no stock ever at their place and she had never inspected the stock at that place. This brings out the reflection of total fraud involved in the transaction on the part of all the persons against whom the complainant is raising allegations. In view of these facts, this court does not find any *ex-facie* innocence on the part of the petitioner. Hence this court is not inclined to exercise its powers under Section 438 Cr.P.C. so as to protect the petitioner against his arrest.

Moreover, this court also find substance in the argument of the learned State counsel that the documents and materials and the money, which are in specific knowledge and possession of the petitioner only, are required to be recovered; and for that purpose the custodial interrogation of the petitioner is required. In view of this situation, if the petitioner is protected against his arrest, at this stage, that would hamper the free and fair investigation by the police as well.

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

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

14th JULY, 2020 **(RAJBIR SEHRAWAT)**
'raj' **JUDGE**

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*