IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.20399 of 2020 (O&M)

Date of Decision: 04.09.2020

Surender Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Arun Bansal, Advocate for the petitioner.

Mr. Pardeep Prakash Chahar, Deputy Advocate General, Haryana for the respondent.

Mr. Charanjit Sharma, Advocate for the complainant.

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MAHABIR SINGH SINDHU, J.

Second petition has been filed under Section 439 of the Code of Criminal Procedure for grant of bail pending trial to the petitioner in FIR No.358 dated 08.09.2018, under Sections 420, 406, 467, 468, 471, 120-B of the Indian Penal Code, 1860 *(for short 'IPC')*; Sections 4, 5, 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 *(for short '1978 Act')* and Section 3(2) of the Haryana Protection of Interest of Depositors (in Financial Establishment) Act, 2013 *(for short '2013 Act')*, registered at Police Station Sadar Fatehabad, District Fatehabad.

2) Allegations against the present petitioner are that he being one of the main promoters of Future Maker Life Care Pvt. Ltd. *(hereinafter referred as 'Company')*, having its Head Office at D.S.S. 45, Red Square Market, Hisar

(Haryana), duped large number of persons to the tune of more than ₹ 2956 Crores.

Above FIR was registered on the basis of written complaint made by one Anil Sihag to the effect that Company has appointed various agents throughout country for selling its products and collected crores of rupees in cash by inducing innocent persons, thereby causing loss of tax to the Government running into crores of rupees. Innocent persons are persuaded to invest with this Chit Fund Company and instead of investing the collected amount, the Company indulges in illegal business activities worth crores of rupees on daily basis. The Company is neither having any product; nor any manufacturing unit; rather it has tie-up with other Companies and it does not purchase any goods. The transactions are limited only to papers, which are totally bogus and frivolous. Company receives approximately ₹ 10 crores in cash daily from its agents at Hisar Office without issuing any receipt and throughout the Country, approximately ₹ 40 crores are collected daily by the Company. Upon receipt of cash amount from its agents, Company issues bills for the products after taking IDs, but no product is supplied to them and only the profit is passed on to the agents on the basis of fictitious bills. The Company, after receiving the amount in cash from agents, issues the bill of its products @ ₹ 7500/- per ID and remits the money into their bank accounts as commission.

For an example, if someone deposits ₹ 2,52,000/- in cash, after 15 days, the Company upon taking ID of other person, issues different bills of the products and induces such person that an amount of ₹ 5 Lakh would be deposited in his bank account after a period of 24 months. The Company is not paying any income tax and it issues half the actual number of bills only.

Although, the Company is having one Office at Village Dhangar, but there is no product and only by taking the IDs from the agents, general public is misled.

3) Contends that petitioner is in custody since 07.04.2019 and after investigation in the matter, challan qua him has already been presented on 10.05.2019, but charges are yet to be framed. Further contends that petitioner is only an investor and he is neither the promoter; nor Director of the Company; rather himself a victim and falsely implicated by the prosecution on the allegation of being main promoter. Learned Counsel for the petitioner contended that there is no material at all with the prosecution regarding the complicity of the petitioner, but he is being unnecessarily victimized. Also contends that on account of the pandemic, trial is likely to take sufficient long time and as such, further incarceration of the petitioner would not serve any purpose.

On the other hand, learned State Counsel opposed the prayer and submitted that petitioner being main promoter of the Company in conspiracy with other co-accused induced the innocent public at large for making the deposit of more than ₹ 2956 Crores without obtaining any requisite license from the Reserve Bank of India. Also submitted that there are total 28 FIRs registered against the Company in different States and petitioner actively participated in the scam as a facilitator; received huge amount in his bank accounts and purchased immovable properties in his name from the ill-gotten money. Further submitted that as a matter of fact, Company is having no product, but running Chit Fund activities throughout the country leading to the evasion of income tax running into crores of rupees and an amount of ₹ 398 Crores is due on account of non-payment of the Goods and Services Tax *(for short 'GST')*. Again submitted that investigation in the matter is still going on and out of total 31 accused, 10 are evading the arrest despite non-bailable warrants issued against them. Lastly submitted that prosecution is making best efforts for bringing all the accused to justice and in case petitioner released on bail, he is most likely to hamper the pending investigation.

Learned Counsel for the complainant supported the pleas raised on behalf of the State while submitting that petitioner has played an active role in the commission of present fraud against the large number of victims throughout the country. Also submitted that co-accused, who are yet to be arrested, openly claiming through social media, including Whatsapp that all the accused are likely to come out very soon after getting clean chit and they will resume their business as usual.

4) Heard learned Counsel for the parties and perused the paper-book.

5) At the outset, it is necessary to mention here that apart from the crime mentioned above, there are 27 other FIRs registered against the Company as well as beneficiaries, who conspired for commission of the alleged scam spread in various States i.e. Haryana, Telangana, Rajasthan, Madhya Pradesh, Andhra Pradesh, Jharkhand, Uttar Pradesh and Maharashtra.

6) Record reveals that Company was incorporated on 26.02.2015 with total share capital of ₹ 10 Lakh by two co-accused, namely, Radhey Shyam and Bansi Lal in equal share. As per Article of Association, the main objects of the Company are as under:-

> ***"1.*** *"To do the business as trading, buyers, sellers, stockiest, retailers, wholesalers, suppliers, distributors, marketing, advertisement or otherwise deal in electronic items, general use items, Fast moving consumer goods, fabrics, health, life care products, Spices, Tea and all other kinds of goods and services and general use items on direct*

selling basis or selling through Network Marketing, online shopping and Network Business.

2. *To carry on all type of selling and purchasing activities directly or indirectly (both in internal and external markets on its own or as sales, purchase or commission, agents and brokers), to act as Service Agents for providing services, after sales and other technical services, to carry on business as marketing, technical consultants both in internal and external markets.*

3. *To act as selling agents, sales organizers as well as consultants, agents and advisors in all the respective branches, to appoint advisors and to open branches and in such capacity to give advice and information and render services to persons, firm, company or body incorporate or authority or government which may be given or rendered while carrying in such business as aforesaid.*

4. *To carry out market research, launch advertisement campaign, and to do all such things as may be necessary for the promotion of sales of any products or article."*

7) Prosecution have collected the information that there are total 14 chief ID promoters and 100 main promoters. Present petitioner is main promoter and ID No.FM 102103 was issued to him.

Police have also recovered one Notice published in the Times of India newspaper on 27.08.2019 which is as under:-

LIFE turning opportunity
to earn income 20k to 10 lakhs/mnth.
For further details
please call 9052402767 / 8919140099

During investigation, statement of Pranjil Batra, Software Engineer of the Company recorded under Section 161 Cr.P.C. to the effect that within a period of three years, the Company collected an amount of ₹ 29,56,91,96,250/- from the depositors and out of that, ₹ 1904 Crores have been verified as per record, but remaining amount of ₹ 1053 Crores are yet to be accounted for. It is necessary to observe that Company did not obtain any license from the Reserve Bank of India for getting the deposits of such a huge amount and thus, could be a big threat to the financial market in the country. Even factum of online selling of various products at the instance of the Company was verified by the prosecution from the list of Direct Selling Entities, maintained by the Ministry of Consumer Affairs and Direct Selling Association (FDSA) for Multilevel Marketing (Direct Selling), but name of the present Company nowhere exists. The ploy of direct selling products by the Company through its agents is only on papers just to swindle the huge amount collected from the depositors by illegal means to wriggle out from the requirement of registration with the RBI under Section 45-1A of the Reserve Bank of India Act, 1934.

Inspector Sanjay Kumar, O/o CGST, Hisar was joined during investigation and he disclosed that an amount of ₹ 3,98,38,81,593/- was due against the Company on account of non-payment of GST as on 03.04.2019. Chairman-cum-CMD of the Company, namely, Radhey Shyam also made a disclosure during investigation regarding the complicity of the petitioner by stating that he was inducted as main promoter for chain system to collect the deposits from agents on commission basis.

8) On 07.04.2019, petitioner joined the investigation and suffered disclosure regarding purchase of immovable properties in his name as well as his wife-Prem Lata with the money received from the Company.

Bank officials produced the record pertaining to the different bank accounts of the petitioner as well as his wife-Prem Lata, wherein money received from the Company was deposited and which are as under:-

Accounts details of Surender Kumar (petitioner) ***Allahabad Bank, Fatehabad***				
Sr. No.	***Account Number***	***Debit in ₹***	***Credit in ₹***	***Balance in ₹***
1	*20638833371*	*12,10,923*	*12,10,590*	*1339*
HDFC Bank, Fatehabad				
2	*501000806780814*	*2,40,76,351*	*2,41,98,610*	*1,22,258*
3	*50200009904078*	*52,08,509*	*53,35,606*	*1,27,097*
Bank of Baroda, Fatehabad				
4	*33560100006251*	*-*	*95,500*	*32,547*

Accounts details of Premlata wife of Surender Kumar (petitioner) ***Allahabad Bank, Fatehabad***				
Sr. No.	***Account Number***	***Debit in ₹***	***Credit in ₹***	***Balance in ₹***
1	*50428452892*	*97,99,286*	*10596878*	*757591*
2	*50465706286*	*1504907*	*13,00,000*	*204907*
HDFC Bank, Fatehabad				
3	*50100234504307*	*4,30,907*	*4,02,746*	*1838*
Bank of Baroda, Fatehabad				
4	*3356010000625*	*-*	*2501000*	*2236*

It is noteworthy that after joining the Company, petitioner purchased various properties in the name of his wife-Premlata without disclosing any other source of income except the amount received from the Company and details of which are as under:-

Properties purchased in the name of Premlata w/o of Surender Kumar (petitioner)		
Sr. No.	**Description of Property**	**Year**
1	32 Kanal 9 Marla land, Village Bighar through Vasika No.655 dated 10.05.2018	2017-2018
2	51 Kanal 18 Marla land, Village Thedi through Vasika No.2443 dated 09.07.2018	2017-2018
3.	30 Kanal 2 Marla land, Village Sulikhera through Vasika No.2463 dated 19.01.2018	2017-2018
4	3.1/2 Marla land (105.87 square yard), R.K. Colony, Fatehabad through Vasika No.4198 dated 25.09.2017.	2017-2018

Still further, police have recovered ID No.FM 102103 to substantiate that petitioner was working as main promoter of the Company and played active role in conspiracy with other co-accused while defrauding the public at large.

9) As on today, investigation is pending with the SIT, headed by an IPS Officer and out of total 31 accused, 21 have been arrested so far. During the course of hearing, this Court was apprised that despite repeated non-bailable warrants, remaining 10 co-accused are still evading the arrest and again their warrants of arrest have been issued for 25.09.2020.

Since investigation in the matter is being delayed by the co-accused and thus, the petitioner cannot take any benefit of the same. Consequently, the argument that incarceration of the petitioner is being prolonged due to Covid-19 is without any substance and liable to be rejected.

Police-papers reveal that petitioner received an amount of more than ₹ 4.5 Crores from the Company through different bank accounts and purchased immovable properties, thus, played an active role as main promoter and as such, the contention that he has no role in the commission of offence is also liable to be rejected.

10) It is astonishing that within a period of three years of incorporation of the Company with mere share capital of ₹ 10 Lakh, all the accused in this case have accumulated the amount of more than ₹ 2956 Crores through illegal means under the garb of selling non-existent products and as such, proper investigation would be required to find out the truth.

11) As discussed above, investigation is still going on and out of total 31 accused, 10 are yet to be arrested and they are openly in league with the petitioner as well as other co-accused, who are in custody, while circulating the misleading information through social media including Whatsapp group to the effect that all are going to be released from custody very soon upon getting clean chit from the Court and as such, misguiding the victims with a sole motive so that the depositors may not come forward to co-operate with the ongoing investigation.

12) No doubt, present case is triable by the Magistrate, but at the same time, it is relevant to take note of the fact that apart from the present case, there are other 27 FIRs pending in different parts of the country against the Company as well as other accused. Petitioner is deeply involved with the syndicate for running the affairs of the Company leading to alleged fraud of more than ₹ 2956 crores, thus, by no stretch of imagination, it could be termed that he is a victim; rather clearly seems to be a beneficiary.

In view of the discussions, made hereinabove, this Court is satisfied that release of the petitioner on bail at this stage would be detrimental to the pending investigation and likely to cause serious prejudice to the case of prosecution.

Thus, taking into consideration the huge financial bungling as well as pendency of investigation against remaining 10 co-accused and to safeguard the interest of large number of victims, this Court is not inclined to grant the concession of bail to the petitioner.

As a result thereof, there is no option except to dismiss the present petition.

Ordered accordingly.

The above observations may not be construed as an expression of opinion on merits of the case.

September 4th, 2020 **(MAHABIR SINGH SINDHU)**
Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*