IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22753-2020
Date of Decision: 11.09.2020

Rajiv Niryal and another

….Petitioners

Versus

State of Punjab

…Respondent

CORAM: Hon'ble Mr.Justice Deepak Sibal

Present: Mr.R.P.Dhir, Advocate for the petitioners
Mr.Jagmohan Ghumman, DAG Punjab
Mr.Shekhar Verma, Advocate for the complainant

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Deepak Sibal, J. (Oral)

The petitioners, who are husband and wife, seek the grant of anticipatory bail in FIR No.77 dated 18.07.2020 registered under Sections 408, 420, 467, 468, 471 IPC at Police Station Qadian, Police District Batala.

The case of the prosecution is that a complaint dated 22.01.2020 was made to the police by one Shri Manohar Lal Sharma, Director, S.S. Bajwa Memorial Senior Secondary School Qadian (for short, the School), as per which, the School which was being run for the last about 40 years and was affiliated to the Central Board of Secondary Education, had a junior and a senior wing. Since the year 2011 petitioner no.1 was said to the working as Principal of the senior wing whereas petitioner no.2 was Incharge of the junior wing. For the junior wing admission and tuition fee, under the supervision of petitioner no.2, was being collected and deposited through a Clerk namely Qaniat Samar whereas for the senior wing such deposits, under the supervision of petitioner no.1, were being accepted on behalf of the school through a Clerk namely Seefha Sharma. Recently, petitioner no.1 had constructed a new house on which he was estimated to have spent Rs.70-80 lakhs (approximately) and had also bought a new car costing about Rs.18 lakhs. The School management became suspicious with regard to the source of the petitioners' income and started the process of getting the accounts of the school scrutinized. When the Clerk of the junior wing namely Qaniat Samar came to know of such action on the part of the School she became nervous and came up to the School management to tell them that the admission money was being misappropriated by the petitioners and in case of refusal by her she was threatened dismissal from service. Similar statement was made by Seefha Sharma who was the Clerk of the senior wing of the School. To the same effect statements were made by two other Clerks namely Lovepreet and Bashir Ahmad. (Statements of all the aforesaid four Clerks were reduced in writing and attached with the complaint made to the police). On 14.09.2019 the management arranged a meeting between the Clerks and the petitioners and on being cornered both the petitioners confessed to their crime and tendered apology. Such admission on the part of the petitioners was then reduced into writing and since by that time the amount of misappropriation/ embezzlement by them was pegged at Rs.15.50 lakhs such amount was voluntarily deposited by the petitioners with the School. On the same basis the Clerks, namely, Qaniat Samar and Seefha Sharma also deposited with the School an amount of Rs.4 lakhs each. Bank vouchers were then got scrutinized which revealed embezzlement by the petitioners of an additional amount of Rs.15

lakhs (approximately). Seefha Sharma then stated that such amount had been taken by petitioner no.1. Since such complaint had been made to the police on the basis of scrutiny of accounts only for the academic year 2019 it was specifically stated in the complaint that scrutiny of accounts for the previous years was going on.

The above complaint was forwarded by the Senior Superintendent of Police, Batala to Deputy Superintendent of Police, Hargobindpur for inquiry whose investigation revealed truth in the allegations made in the aforesaid complaint. He further found forgery by the petitioners in the bank vouchers and resultantly a case under Sections 408, 420, 467, 468, 471 IPC was registered against the petitioners.

The petitioners, apprehending arrest, filed a petition under Section 438 Cr.P.C. before this Court being CRM-M-20056-2020 *Rajeev Niryal and another vs. State of Punjab* which was dismissed to enable the petitioners to first approach the Trial Court for the relief claimed. As per liberty granted by this Court the petitioners then approached the Additional Sessions Judge, Gurdaspur (for short, the Trial Court) for the grant of anticipatory bail. The Trial Court dismissed the petitioners' petition on the ground that the allegations against the petitioners were serious as they were alleged to have misappropriated funds on a large scale and had also forged bank vouchers. In these circumstances, the petitioners have knocked the doors of this Court through the present petition seeking therein anticipatory bail.

Learned counsel for the petitioners submitted that the petitioners are highly educated; they have no criminal background; in view of the compromise under which they have paid to the School an amount of Rs.15.50 lakhs they deserved to be granted anticipatory bail; they were never incharge of the accounts nor entrusted with the money deposited with the School; no opinion of a handwriting expert had been taken before lodging the FIR against the petitioners for forgery; the entire case had been built up against the petitioners by the complainant and was not supported by the State; no recovery is to be made from the petitioners; the accounts statement submitted by the complainant had not been audited and that the petitioners did not expect fair investigation at the hands of the police.

Learned State counsel, while drawing the attention of this Court to the status report filed by the State, submitted that after the afore referred complaint had been received by the State an inquiry was conducted by a senior officer of the rank of Deputy Superintendent of Police which revealed that admission/ tuition fee received by the School had not been deposited in the bank and in that regard fake bank vouchers were prepared; amounts deposited in the bank were altered in the School records and that investigations conducted so far had revealed that for the academic year 2019 the petitioners had misappropriated an amount of Rs.31,83,828/-.

It was further submitted that since audit / scrutiny of accounts for the earlier years when the petitioners were serving the School was going on, it was likely that more embezzlement by the petitioners would be unearthed and that the Investigating Officer had conducted several raids to apprehend the petitioners but they could not be arrested as they were evading arrest.

Learned counsel for the complainant submitted that on 14.09.2019 when the School management confronted the Clerks and the petitioners they admitted their guilt and had deposited with the School management an amount of Rs.15.50 lakhs as by that time the school management had found the petitioners to have misappropriated that amount. However, further scrutiny of accounts for the academic year 2019 revealed that for that year the petitioners had misappropriated over Rs.31 lakhs.

It was further submitted that scrutiny/ audit of accounts for the academic year 2018 had revealed that in addition to the aforesaid amount of over Rs.31 lakhs, the petitioners had embezzled an additional amount of Rs.49 lakhs (approximately). Thus, till now for the academic years 2018 and 2019 over Rs.80 lakhs had been found to have been embezzled by the petitioners. The modus operandi of the petitioners was that in conspiracy with the Clerks they either used to directly siphon the cash received by the Clerks from the parents of the students or forge/ interpolate bank vouchers/ school records.

Through a written document dated 14.09.2019 which has been appended by the petitioners with their petition as Annexure P-4 and is rather relied upon by them as also is signed by both of them in the presence of as many as five witnesses, which includes petitioner No.1's brother-in-law, both the petitioners admitted to the embezzlement of School funds and thereafter made a deposit with the School. Since by 14.09.2019 scrutiny of accounts by the School had revealed embezzlement of an amount of Rs.15.50 lakhs, at that time, only such amount was deposited by them.

The aforesaid document (Annexure P-4) and paragraph 3 of the petition which contains the pleadings with regard to such document reads as under:-

"(ANNEXURE P-4)

Today dated 14.09.2019 I Dr.Rajeev Niryal Principal S.S. Bajwa Sr.Sec. School and my wife Anjana who is Head Mistress of Jr. Wing of this school. They both are responsible to handle the wings. The embezzlement is done through me and my wife of the school amount and in that Rs Fifteen Lakh fifty thousand is due from me. In this regard a compromise has been affected between Sh Manohar Lal Sharma who is director of school and myself and my wife in writing and in presence of respectable and relatives regarding cheating. Myself and my wife has admitted a mistake, as per the decision we have paid Rs. Fifteen Lakh fifty thousand to Manohar Lal Sharma in presence of main respectables. In this regard I will not commit any anywhere."

PARAGRAPH 3 OF THE WRIT PETITION

3. That before proceedings further, it is submitted that both the petitioners husband and wife in order to save their respect deposited Rs.15,50,000/- with the complainant qua this an agreement was executed on 14.09.2019. Copy of same is attached herewith as Annexure P-4 and true translation is Annexure P-4/1 Once the matter is compromised between both the parties in the presence of witnesses and money was received by the complainant and it does not look good to level false allegations. This was full and final. So, in the present FIR which was recorded after delay of 10 months after the execution of compromise in which it is mentioned in the FIR Annexure P-1 by complainant that respondent deposited the money Rs.l5,50,000/- out of embezzled money is against the record and compromise and false. This FIR registered just to harass the couple. Once the matter is compromised by way of agreement, so the criminal liability if any which is not there in the present case, converts into civil liability. In order to corroborate this fact intention of this Honble Court is towards column No. 10 of FIR Annexure P-l where it is mentioned that *total value of the property stolen is Rs.15,62,379/-. So, from every angle, if there was any liability that has already been discharged. So, this is a false litigation just to teach the lesson to the petitioners as to why they had tendered the resignation."*

It is interesting to note that in their petition the petitioners relied on Annexure P-4 to contend that once a compromise had been arrived at between the parties it should be treated as full and final and after such compromise the matter should have been laid to rest. However, when the complainant sought to refer to the same document to say that through such document the petitioners had admitted to their guilt, the petitioners filed a rejoinder to state therein that Annexure P-4 had been got signed by them under threat/coercion and by locking up their children.

As per the status report filed by the State, after receipt of the complaint from the school the matter was investigated and such investigation revealed that for the academic year 2019, in addition to aforesaid amount of Rs.15.50 lakhs, the petitioners had embezzled an additional amount of Rs.16 lakhs (approximately).

As per the complainant, scrutiny of accounts for the academic year 2018 have further revealed that the petitioners, in collusion with the clerical staff, have embezzled for that academic year an amount of Rs.49 lakhs (approximately). Thus, for the academic years 2018 and 2019 the petitioners are alleged to have embezzled an amount of Rs.80 lakhs (approximately).

As per the State's status report investigations conducted so far have also found the petitioners to have indulged in forging/ interpolation of accounts of the School and manufacture of fake bank vouchers to facilitate the embezzlement they are alleged to have done.

The allegations against the petitioners are of large scale embezzlement and forgery. Till date allegations of embezzlement/ forgery pertain to the academic years 2018 and 2019. Investigation for the previous years is still going on. Recovery of the entire alleged embezzled amount is yet to be made. The petitioners are alleged to have used the embezzled amount in the construction of a new house and purchase of a new car on which they have allegedly spent about Rs.one crore. Both the petitioners are beneficiaries of and users of the house and car. The investigating agency is required to go into the source of funds spent in the construction of aforesaid house and the purchase of the car. The nexus between the petitioners and the clerical staff needs to be gone into. The bank vouchers and the account books maintained by the School need to be put to the petitioners. The modus operandi of the petitioners vis-a-vis their defence needs to be investigated. The veracity of the afore referred document dated 14.09.2019 (Annexure P-4) also needs to be gone into. These reasons are inclusive and not exhaustive.

In view of the above and in the light of the affidavit by the State that in spite of several raids conducted by the Investigating Agency the petitioners have not been found at their given address and thus are evading arrest, this Court is of the opinion that custodial interrogation of the petitioners is necessary.

Dismissed.

It is clarified that the above observations have been made by this Court to decide the present petition seeking anticipatory bail in which investigation is still going on and therefore these observations be not construed as opinion on the merits of the case as trial of the petitioners is yet to take place.

11.09.2020 **(Deepak Sibal)**
gk **Judge**

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No