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

CRM-M No.39464 of 2020 (O&M)
Date of Decision: 22.12.2020

ANUP NARGAS ......**Petitioner**
Vs
UNION TERRITORY OF CHANDIGARH .....**Respondent**

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. J.S. Bedi, Sr. Advocate with
Mr. Viraj Gandhi, Advocate and
Mr. Adarsh Dubey, Advocate
for the petitioner.

Mr. Ashu Mohan Punchhi, PP with
Mr. Anupam Bansal, Advocate
for the respondent/UT Chandigarh.

Mr. Raghav Gulati, Advocate
for the complainant.

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RAJ MOHAN SINGH, J.

The case was taken up for hearing through video conferencing.

CRM Nos.29414 & 31144 of 2020

For the reasons mentioned in the applications, the same are allowed.

The accompanying documents are taken on record, subject to all just exceptions.

Main case

[1]. Petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C in case bearing FIR No.99 dated 27.10.2020, registered under Sections 420/468/471/120-B IPC at Police Station North, Chandigarh.

[2]. The FIR came to be registered on the complaint of Mrs. Adarsh Manocha w/o Sh. Jasbir S. Manocha with the allegations that the accused namely Sanjeev Bhatia and Anup Nargas approached her and her husband. They asked them to invest in the Company namely YAR GUN ENTERPRISES PRIVATE LIMITED (YEPL) which is a logistic company dealing with the storage of frozen meat for the supply to Army Command Stations. The accused also told that the other firm namely MEDIAIDS provides for cold rooms for YEPL. The accused allured the complainant and her husband by projecting that they would receive 12% return on the investment on monthly basis. They also promised that the complainant would be made one of the Directors in the said Company. The accused also increased the rate of shares of YEPL from Rs.10 per share to Rs.55 per share as per projection report i.e. Valuation certificate dated 21.02.2017 allegedly issued by Kamini Sehgal, CA. On the basis of aforesaid assurance, a written Memorandum of Understanding (MOU) was executed on

21.05.2017 between the accused, complainant and other investors. The complainant invested a sum of Rs.50 lakhs in YEPL.

[3]. In nutshell, the allegations against the accused are that they have embezzled an amount of Rs.344.57 lakhs and on the basis of forged valuation certificate allegedly issued by Kamini Sehgal, CA on 21.02.2017, they increased the price of share of the Company from Rs.10 to Rs.55 and allured all the new investors to invest their money on the assurance that they would get more benefits. The MOU was executed on the basis of such assurance that the complainant was to be given a post as per clause 9 of the said MOU, but she was not given the said position, neither she was made Director in the Company, nor was paid money as promised. The investors have not been paid anything till date and the accused persons have cheated the complainant and the investors. A huge amount more than Rs.3 crores has been transferred from the accounts of the Company.

[4]. Learned Senior counsel for the petitioner vehemently submitted that it is a case of civil nature and has been given the colour of criminal case. Petitioner is not a Director of the Company. He had already resigned. The MOU was executed on 21.05.2017 and was signed by all the concerned parties. Thereafter the Company started its operations. The petitioner

has no connectivity with the Company and the complainant, who was introduced by Brigadier G.S. Puri and Colonel P.S. Bindra (Retd.). There was no inducement on the part of the petitioner. The shareholding is apparent from MOU and the valuation of YEPL was done and certified by the professionals. The complainant had verified the documents of the Company before becoming the shareholder. Petitioner had already dis-associated himself from the Directorship w.e.f. 14.11.2019. The husband of the complainant was inducted as Director in the Company vide resolution of the Company dated 17.10.2019 which is apparent from Form DIR-12 (Director Identification Number) of the husband of the complainant. Vide resolution dated 22.10.2019, it was resolved that all the financial powers would vest with the Directors including the husband of the complainant, who was a signatory in the Bank accounts. The valuation report was obtained through the services of Company Secretary and his professional fee was also paid. A litigation is pending between the petitioner and the complainant as shareholders before the National Company Law Tribunal and the orders passed by the Tribunal are matter of record. The complainant filed a complaint in the year 2018 and the same remained pending for about 2 years and thereafter the FIR in question came to be registered only on 27.10.2020.

[5]. Learned Senior counsel further submitted that signature of Kamini Sehgal, CA if compared from documents viz. her statement dated 28.09.2020 made before the Inquiry Officer (EOW), Sector 17, Chandigarh, Annexure P-17 i.e. Independent Auditors' Report dated 10.09.2016 and Annexure P-2 i.e. Valuation Certificate, then these documents would provide the same pattern of signatures. The MOU is based on certain documents. The valuation of the Company share was assessed by the Chartered Accountant and the same was accepted after due discussion at Rs.55 per share i.e. Rs.10 per share having a premium of Rs.45 per share. The MOU is dated 21.05.2017, whereas the statement of Kamini Sehgal, CA was recorded only on 28.09.2020. The Chartered Accountant was duly paid by the Company for the valuation. Professional fee for valuation report was duly paid by the Company itself through Company Secretary Virender Sharma.

[6]. Learned Senior counsel further submitted that if the valuation report was forged, then the petitioner would not have paid the Chartered Accountant for the valuation report on 01.03.2018. The petitioner has also prayed before the NCLT for the appointment of the Auditor to carry out the exercise of annual audit and to present the annual audit report of the Company YEPL. The figures are claimed to be highly premature

as the petitioner is also praying for internal audit of MEDIAIDS accounts.

[7]. Learned Senior counsel by referring to the minutes of meeting of the Board of Directors of YEPL dated 06.08.2020 further submitted that the point regarding dispute of dues to MEDIAIDS, a proprietorship firm of Maj. Sanjeev Bhatia (Retd.) was discussed and after due deliberations, it was decided that Bharat Rajeev & Associates has shared its audit report to the EOW without tabling to the Board of Directors. A resolution in this regard may be passed and a letter to go from Yar Gun Enterprises Pvt. Ltd. to EOW that the audit report does not have the concurrence of Board of Directors as yet as the Company has ordered an internal audit. Once the internal audit is over, action as deemed appropriate will be taken. The report has now been tabled.

[8]. Learned Senior counsel further submitted that the valuation certificate was infact issued by Kamini Sehgal CA, whose services were availed by the then Company Secretary Virender Sharma. The said valuation certificate was also uploaded on the website of Ministry of Corporate Affairs on 07.07.2017 by the said Company Secretary Virender Sharma. No complaint was made by the author of share valuation certificate i.e. Kamini Sehgal, CA before any authority in respect

of misuse of her stamp/seal or any forgery committed on the document. The valuation certificate is also proved from other financial documents such as auditors' report which was signed by Kamini Sehgal, CA and was also issued in her name for other Companies unrelated to the petitioner or co-accused. The said documents are available on the portal of Ministry of Corporate Affairs. Learned Senior counsel referred to Annexure P-17 i.e. Independent Auditors Report issued by Kamini Sehgal, CA for the purposes of comparison of her signatures appearing on the said auditors report, on the valuation certificate and on the statement dated 28.09.2020 made by her before the Inquiry Officer, EOW, Sector 17,Chandigarh.

[9]. Learned Senior counsel further submitted that the valuation certificate is based on many documents and was a culmination of the analysis of all other financial documents such as Balance Sheets, Assets and Liabilities, Profit and Sales Account, Sales projection etc. which ultimately resulted in share price valuation. In the absence of any pointed suspicion with regard to other financial documents, no such allegation of forgery in respect of valuation certificate can be made.

[10]. Learned Senior counsel further submitted that some other complaints have also been filed against the petitioner i.e. by other shareholders namely Ms. Navnika Puri w/o Brigadier

Gian Puri and Mrs. Supreeti Binda w/o Colonel P.S. Bindra after registration of present FIR. The aforesaid complainants are also respondents in NCLT petition and now they have filed the complaints as a counter-blast to the NCLT petition. Husband of Ms. Navnkia Puri and Mrs. Supreeti Bindra are the Directors in the Company against whom NCLT petition has been filed. On 17.10.2019, the husband of the complainant was added as a new Director to the Board of Company at the instance of the complainant herself. Ms. Navnika Puri was also re-appointed as Director on the Board of the Company after her initial resignation on 13.12.2017. Husband of the complainant unilaterally conducted an audit of the accounts of the Company, contrary to the provisions of the Companies Act. The husband of the complainant engaged the services of M/s Bharat Rajeev & Associates for conducting this audit despite there being another internal auditor of the Company. That is why, it was resolved and recorded in the minutes of meeting dated 06.08.2020 that the auditor report shared with the EOW does not have the concurrence of the Board of Directors and the Company has ordered an internal audit.

[11]. At last, learned Senior counsel submitted that as of now there is no FSL report available with the Investigating Agency in the context of the signature of Kamini Sehgal, CA on the

valuation report.

[12]. On the other hand, learned Public Prosecutor for UT, Chandigarh duly assisted by learned counsel for the complainant opposed the petition on the ground that huge amount to the tune of Rs.344.57 lakhs has been embezzled by the Directors of the Company and it is yet to be ascertained as to how the money had been transferred from the accounts of Company to other accounts. Custodial interrogation of the petitioner is required to ascertain the manner in which transfer of the amount had taken place. The investors were allured and induced on the basis of forged valuation certificate/report allegedly prepared by Kamini Sehgal, CA.

[13]. Learned Public Prosecutor further submitted that perusal of Annexure P-2 i.e. valuation certificate would show that the signature of CA Kamini Sehgal appearing in a particular manner as Proprietor of “Kamini Sehgal & Co., Chartered Accountants, Ranjan Plaza, Zirakpur with FRN No.022860N.” In the seal, the word “KAMNI” has appeared. If this document is compared with admitted document of the petitioner i.e. Annexure P-17, then Firm Registration Number would come out to be 024169N and the word “KAMINI” would appear in the seal therein. The pattern of signatures of Kamini Sehgal, CA is also different than that of Annexure P-2. In admitted document

Annexure P-17, Email ID of Kamini Sehgal has also appeared whereas there is no such Email ID shown in Annexure P-2.

[14]. Learned Public Prosecutor further submitted that in the MOU, 13 persons are shown to have participated whereas the persons appearing at Sr. Nos.3, 4 and 8 i.e. Smt. Bharti Chaturvedi, Smt. Supreeti Binda and Shri Geet Bindra respectively have not signed the aforesaid MOU in any capacity. The aforesaid persons are also shown to be promoters of the Company. The parties at Sr. Nos.4 to 13 are shown to have agreed to bring fresh investors and these parties shall be allocated shares in the manner as depicted in para no.3 of the MOU. Rs.39,314,000.00 is the amount which was invested by the new investors and no investor has received anything till date.

[15]. Learned Public Prosecutor further referred to the decision to induct Adarsh Manocha to be Head, HR & IT and the remuneration for active participation in the operation of business is Rs.50,000/-. The amount invested is shown to be Rs.50 lakhs and return at the rate of 1% of the invested amount is Rs.50,000/- per month. The return @ 12% on total investment from the date of investment was decided to be paid on monthly basis. It was decided to be paid from July 2017 onwards subject to availability of funds and payments of arrears from the date of

investment till June 2017 were to be paid after October 2017 on monthly basis. The mode of payment of such return was to be decided mutually by the shareholders. This was not permitted in the eyes of law and should not have been put on record. It was so observed in para No.12 of the MOU. There was no resolution of the Company for Chartered Accountant for the investment etc.

[16]. Learned Public Prosecutor further submitted that Kamini Sehgal has denied her signature on Annexure P-2 i.e. valuation certificate. She has made her statement before the Inquiry Officer, EOW, Sector 17, Chandigarh on 28.09.2020. She has further stated that the Company namely Yar Gun Enterprises Pvt. Ltd. is not known to her. She has never worked for this Company. The letter head on the basis of which valuation certificate has been issued does not belong to her. Even the format used in the certificate has not been used by her at any point of time for issuing certificates to her clients. She has pleaded the said certificate to be forged. FRN Number mentioned in the certificate is also wrong as her FRN Number is 024169N and not 022860N. She has also denied her signature on the valuation certificate (Annexure P-2). She has also submitted that as per Rule 13, Explanation of Companies Act, 2013, the certificates are to be issued by an independent

merchant Banker, who is registered with the Securities and Exchange Board of India or an independent Chartered Accountant in practice having minimum experience of 10 years. She has pleaded herself to be not competent to issue such valuation certificate.

[17]. Learned Public Prosecutor further submitted that the material uploaded on the website of the Ministry of Corporate Affairs was, inter alia, consent purportedly given by Mrs. Bharti Chaturvedi, Director, YEPL to hold an extraordinary general meeting of the Company at short notice. The purported consent was dated 23.02.2017. It has come during course of investigation that the said consent given by Mrs. Bharti Chaturvedi by holding such meeting at short notice is a forged document. She has not signed any consent and infact from September 2012 onwards she has not involved in the affairs of the Company and never attended any meeting of Board of Directors or shareholders. Mrs. Bharti Chaturvedi has denied one of the annexures uploaded on the website i.e. Form No.PAS-4 purportedly signed by her on 24.02.2017. This is apparent from the statement of Mrs. Bharti Chaturvedi recorded on 09.11.2020 by the Sub-Inspector, EOW, where she has stated that if her name/signatures physically or digitally have been used anywhere during the last 8 years, the same have

been wrongly done and is without her consent.

[18]. Learned Public Prosecutor further submitted that the forged original valuation certificate has not been recovered from the petitioner so far, therefore, question of comparison of signature appearing on the said valuation certificate vis-a-vis. the admitted signatures of Kamini Sehgal, CA does not arise.

[19]. Both the parties have argued the case with reference to numerous documents. While dealing with the anticipatory bail, I refrain myself from commenting upon legality and veracity of these documents, lest it may prejudice the case of the parties during trial. At this stage, I would not like to comment upon genuineness of the assertion and denial by the parties based on these documents, but in any case, keeping in view the nature of allegations surfaced in respect of forged valuation certificate, I deem it appropriate not to grant any indulgence in favour of the petitioner. Custodial interrogation of the petitioner is required. Therefore, this petition is found to devoid of merits and is accordingly dismissed.

[20]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

December 22, 2020
Atik

Whether speaking/reasoned Yes/No
Whether reportable Yes/No