IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9205-2021
Reserved on 23.03.2021
Pronounced on 09.04.2021

Amit Mittal

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: Hon'ble Mr.Justice Deepak Sibal

Present: Mr. Ravinder Malik (Ravi), Advocate and
Mr.Sarthak Singhal, Advocate
for the petitioner.

Mr. Rupinder Singh Jhand, Addl. A.G., Haryana and
Mr. Ashok Kumar Sehrawat, DAG, Haryana.

Mr.Y. Puran Kumar, IPS, I.G. Ambala Range
Mr.Shekhar Vidyarthi,
Excise and Taxation Commissioner, Haryana and
Mr.K.K. Rao, IPS, Commissioner of Police, Gurguram

Ms. Priya Sharma, Advocate and
Mr. N.P. Bhardwaj, Advocate
for the complainant.

Deepak Sibal, J.

The present petition has been filed under Section 438 Cr.P.C. for the grant of anticipatory bail in FIR No.54 dated 12.02.2021 registered under Sections 120-B, 406, 419, 467, 468, 471, 473 and 420 IPC at Police Station Ambala Cantt, District Ambala.

The complainant filed an application with the police that the petitioner, who was the complainant's business partner, in conspiracy with his co-accused, had siphoned off from their partnership firm, an amount of

Rs.1,69,75,000/-.

The complainant further alleged in his application that the complainant was 75 years old; on account of his old age and various ailments being suffered by him, since the year 2017, he had not been visiting the business premises too often; the petitioner, taking undue advantage of such a situation, in conspiracy with his co-accused, by using fake documents and stamps, started issuing bearer cheques in the names of fake firms; he then got these cheques encashed through his own persons/ employees who impersonated themselves to be authorised representatives of the fake firms in whose favour the cheques had been issued and after encashing the said cheques gave the cash to the petitioner.

On the basis of the above complaint the afore referred FIR was registered in which the petitioner, along with others, were nominated as accused persons.

Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case due to strained business relations between the complainant and the petitioner who were partners of M/s Banwari Lal and Sons (for short- the firm); the petitioner, as partner of the firm, was authorised to issue cheques on behalf of the firm; the cheques in question had been issued by the petitioner in favour of M/s Star International, Gurugram (for short – Star International) and M/s Kamdhenu Impex, New Delhi (for short – Kamdhenu Impex) in lieu of electrical equipment purchased from them; such purchases were duly reflected in the account books of the firm; there was nothing on the record to show that between the years 2016-2018, when the purchases were made by the firm from Star International, such firm did not exist; similarly, there is also no evidence to show that Kamdhenu Impex was also not existing in the year 2017-2018 i.e. when the firm made purchases of electrical equipment from it; both Star International and Kamdhenu Impex were duly registered by the respective Sales Tax authorities at least at the time when the firm purchased electrical equipment from them; bearer cheques were issued for purchases made from the aforesaid two firms on the asking of its proprietors; these cheques were got encashed by their own authorised representatives with whom the petitioner has no concern; the dispute in hand is a civil dispute which has been given a colour of criminality only to pressurize the petitioner; two FIRs of similar nature had already been registered by the complainant against the petitioner but when the petitioner secured anticipatory bail in these cases the present FIR was got lodged only to pressurize the petitioner and with an attempt to put him behind the bars; in any case another FIR on the same cause could have not been registered; Star International and Kamdhenu Impex cannot be said to be fake firms because they have consistently been filing their Sales Tax returns; the complainant was an active partner and therefore it does not lie in his mouth to say that he was not aware of the business dealings of the firm with Star International and Kamdhenu Impex and that the petitioner is ready and willing to join investigation as and when called by the investigating agency.

In support of his contentions learned counsel for the petitioner relied on the following judgments:-

1. Velji Raghavji Patel vs. State of Maharashtra AIR 1965 SC 1433
2. G. Sagar Suri vs. State of U.P. 2000(1) R.C.R. (Criminal) 707
3. Balkar Singh vs. State of Punjab 2010(3) R.C.R. (Criminal) 696
4. T.T. Antony vs. State of Kerala 2001(3) R.C.R. (Criminal) 436

5. CRM-M-7749-2014- Shyam Singh and another vs. State of Haryana and another , decided on 04.02.2019.

Learned State counsel opposed the grant of anticipatory bail to the petitioner on the ground that the petitioner, as the complainant's partner, by taking undue advantage of the complainant's old age and his absence, siphoned off huge amounts from their partnership firm through issuance and encashment of bearer cheques in the name of two fake firms namely Star International and Kamdhenu Impex; the petitioner, who was the authorised signatory of the firm, issued bearer cheques in the names of the aforesaid fake firms and then got them encashed through his own persons/ employees who after impersonating themselves as authorised representatives of the aforesaid fake firms, encashed the bearer cheques issued by the petitioner and then brought the cash to the petitioner for which the petitioner gave them a small commission; co-accused Gurdial and Ashwani, who had encashed most of the bearer cheques in question, during the course of the on going investigation, had disclosed the aforesaid modus operandi being adopted by the petitioner.

Learned State counsel further went on to submit that in the year 2016 Star International had made an online application seeking its registration under the Sales Tax Laws of the State and the sale tax authorities registered it without any physical verification; investigation conducted by the police so far had revealed that the given address of Star International was never in existence; as per the documents attached with the application form made by Star International for seeking its registration under the Sales Tax Laws, the given address was 136, Shopping Arcade, Sushant Lok, Gurugram; as per another attached document such premises had been taken on lease by them through a lease agreement between one

Sanjay Kumar and Kailash Chand Bansal – alleged proprietor of Star International; since Sushant Lok, Gurugram had been developed by M/s Ansal Properties (for short – the developer) questioning of the management of the developer revealed that 136, Shopping Arcade, Sushant Lok, Gurugram was an address which was never in existence and that there was no conveyance deed by the developer in favour of Sanjay Kumar as also that no lease was registered with them between Sanjay Kumar and Kailash Chand Bansal; the police searched for Sanjay Kumar but he could not be found; Kailash Chand Bansal's house was located where he was not found but his two brothers, on being questioned, informed the police that Kailash Chand Bansal was a small time electrician; he had no concern with the business of trading in electrical goods and that preliminary investigation had revealed that Kamdhenu Impex was also a fake firm.

Learned counsel for the complainant argued on the same lines as the learned State counsel.

In view of divergent stands of the parties with regard to the genuineness of Star International and Kamdhenu Impex, on directions issued by this Court, Sh. S.S. Siwach, Deputy Excise and Taxation Commissioner, Gurugram and Sh.Ram Kumar, DSP, Ambala caused appearance. Sh.Siwach submitted that Star International had applied for its registration through the online platform of the Sales Tax authorities and was registered after physical verification. On the other hand Sh.Ram Kumar, relying on investigations done by the police so far, submitted that Star International never existed.

With a view to reconcile the above conflict of stands taken by two wings of the State and for clarity on this crucial aspect this Court then directed the Excise and Taxation Commissioner, Haryana, Inspector General of Police, Ambala Range and Inspector General of Police, Gurugram Range to appear before this Court for assistance.

In compliance with the afore directions issued by this Court Sh. Shekhar Vidyarthi, Excise and Taxation Commissioner, Haryana appeared before this Court and stated that the earlier stand taken by Sh. Siwach that Star International's online application was registered after physical verification was incorrect as the same was not borne out from the record and that even after its registration Star International was communicating with the Sales Tax authorities only through its web portal. On coming into force of the Central Goods and Services Tax Act, 2017 the business of the said firm, which was running into crores of rupees, was found to be suspicious. Therefore, it was flag marked and on physical verification no such firm was found to exist. Accordingly, the said firm was declared to be fake and is being proceeded against as per law.

Sh. K.K. Rao, IPS, Commissioner of Police, Gurugram and Shri Y. Puran Kumar, IPS, Inspector General of Police, Ambala Range also submitted on the same lines as Sh. Vidyarthi. Rather, they went a step further to say that Star International, while applying for online registration with the Sales Tax authorities, had given its address to be 136, Shopping Arcade, Sushant Lok, Gurugram and had also submitted certain documents which included a lease deed between one Sanjay Kumar and Kailash Chand Bansal, its alleged proprietor.

According to Sh.Rao and Sh.Kumar investigations done by the police so far had revealed that 136, Shopping Arcade, Sushant Lok, Gurugram was an address which was/ is not in existence and that there was also no conveyance deed between the builder and Sanjay Kumar as also that no lease agreement had been registered with the builder or the State Registration authorities between Sanjay Kumar and Kailash Chand Bansal. In spite of earnest efforts made by the police, Sanjay Kumar could not be located and the brothers of Kailash Chand Bansal, when located, revealed that Kailash Chand Bansal was a small time electrician and not a businessman having a firm with turnover of crores of rupees.

The above stand by the State has also been placed on the record in the form of an affidavit of Ram Kumar, DSP, Ambala City.

In addition to the above, the State has argued that co-accused Gurdial Singh and Ashwani, on being questioned by the police, have revealed that they were given the bearer cheques in question by the petitioner to get them encashed which they did and thereafter, as instructed by the petitioner, they handed over the cheque amounts, in cash, to the petitioner for a small commission.

In the light of the afore consistent stand taken by both the Tax authorities of the State of Haryana as also the investigating agency, at this stage, the existence of Star International, in favour of whom the petitioner issued bearer cheques for over a crore of rupees, which were also encashed, is under a cloud and such cloud cover further darkens in view of the fact that Star International was registered with the Tax authorities in Haryana as a Timber Trader for dealing in Timber, Hardware Goods, Tools whereas as per the case set up by the petitioner, between years 2016-2018, for its firm, the petitioner had allegedly purchased from Star International "Electrical goods" worth crores of rupees.

Investigations conducted so far have further revealed that on one hand Star International was a firm whose turnover was in hundreds of crores of rupees whereas on the other hand its registered Proprietor namely Kailash Chand Bansal has been found to be a small time electrician living in a small flat in Delhi.

Issuance of bearer cheques by the petitioner for over Rs.1.50 crores in favour of the afore referred firms whose very existence is under a cloud and as to why the alleged authorized representatives of these firms which were having their registered offices in Gurugram and New Delhi were coming all the way to Ambala to encash these cheques, is, at this stage, also found to be suspicious.

Learned counsel for the petitioner also could not explain as to why the petitioner had issued bearer cheques in the course of business transactions for over Rs.1.50 crores in violation of Section 40A(3) of the Income Tax Act, 1961.

In the light of the above narration, the petitioner's custodial interrogation is found necessary.

The argument raised on behalf of the petitioner that he has been subjected to three FIRs of similar nature is liable to be considered only to be rejected as in the first FIR being FIR No.300 dated 12.07.2020 registered under Sections 406, 409, 420, 120B IPC at Police Station Ambala Cantt the allegations against the petitioner and his co-accused therein are that on 21.06.2020, the petitioner along with his son, had taken certain important documents as well as stock lying in the firm of which the petitioner and the complainant are partners; on 26.03.2020 the petitioner's wife came to the firm and replaced all cctv cameras as also shifted the stocks from the firm's godown to an unknown place; the petitioner had replaced the board bearing the name of the partnership firm with the board depicting the name of his own firm namely Synergy Trading Company; the petitioner had tampered with the accounts of the firm; the petitioner had formed firms namely Shri Krishna Trading Company, Banwari Lal Electric Company and Arihant Agency and that he had also shown to have purchased stocks worth Rs.5 lakhs and Rs.10 lakhs from the complainant's firm to his own firm which transactions were fake.

In the second FIR being No.325 dated 04.08.2020 registered under Sections 406, 420 IPC at police station Ambala Cantt, the petitioner and his wife, along with others, are accused of shifting stocks of the firm, of which the complainant and the petitioner are partners, to an unknown place and that the petitioner had tampered with the accounts of the firm with a view to misappropriate such stock.

In the FIR in question the petitioner in conspiracy with his wife and other persons, is accused of issuance of bearer cheques to the tune of Rs.1,69,75,000/- in the name of fake firms namely M/s Star International, Gurugram and M/s Kamdhenu Impex, New Delhi and then getting the same encashed from his own persons.

Thus, it is clear that the subject matter of the earlier two FIRs is distinct when compared to the allegations made in the present FIR and therefore *T.T. Antony's case* (supra) and *Balkar Singh's case* (supra) wherein the Supreme Court and this Court respectively have held that a 2nd FIR on the same cause is not maintainable have no application.

In *Velji Raghavji Patel's case* (supra) the Supreme Court was considering a question as to whether a partner can be convicted under Section 409 IPC on account of his failure to account for monies belonging to the partnership firm. Such question was answered to hold that since every partner has dominion over the assets of the partnership firm there can be no entrustment unless there was a special agreement to that effect and thus Section 409 IPC would not apply.

In *G. Sagar Suri* (supra) the Supreme Court held that the FIR in question could not have been lodged against the petitioner therein as the same was based on a dispute between partners and was thus civil in nature.

Shyam Singh and another (supra) was cited by learned counsel for the petitioner to contend that a partner has the authority to act on behalf of the partnership firm and therefore with regard to allegations of misappropriation/ siphoning of funds of the partnership firm, the petitioner cannot be prosecuted at the behest of the complainant- his partner.

In the present case the petitioner is accused of siphoning of funds of the partnership firm through issuance of bearer cheques in favour of fake firms and then getting them encashed through his own persons. These facts distinguish the present case from facts in all the judgments cited above.

In view of the above no merit is found in the present petition.

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.

09.04.2021 **(Deepak Sibal)**
gk **Judge**

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