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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22354-2021 (O&M)
Date of decision : 13.08.2021

Umesh Madaan ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Aashna Gill, Advocate for the petitioner.

Mr. Deepak Sabherwal, Addl. A.G. Haryana.

Mr. Abhimanyu Singh, Advocate for the complainant.

(Through Video Conferencing)

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VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of pre-arrest bail to the petitioner in FIR No.63 dated 22.01.2021 registered under Sections 406, 420, 506 of the Indian Penal Code, 1860 (Sections 409 and 120-B of IPC have been added later on) at Police Station City Yamuna Nagar, District Yamuna Nagar.

When this matter came up for hearing on 07.06.2021, this Court was pleased to pass the following order:-

> *"The matter has been taken up through video conferencing in the light of COVID-19 pandemic.*
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> *The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner, namely, Umesh Madaan, in case FIR No. 63 dated 22.01.2021 (Annexure P-1), under Sections 406, 420, 506*

IPC (Sections 409 and 120-B IPC added later on) registered at Police Station City Yamuna Nagar, District Yamuna Nagar.

As per the version of the prosecution, the aforesaid case was registered at the instance of Hemant Kumar Gupta, who was indulging in the business of trading and export of plywood and furniture. One of the accused, namely, Padam Sharma @ Pawan Bahadur was working under the complainant for the last 25 years. He had allured the complainant for the spread of the business in Nepal along with fellow accused, namely, Amit Madaan and Umesh Madaan (the present petitioner) and relating to the same, huge amount was invested by the complainant for the spread of the said business. However, the profits were not accounted for by the aforesaid persons and as such there are accusations of embezzlement of the huge amount by all the accused.

Now, it is submitted by the counsel for the petitioner that the complainant is an influential person and he had managed to abduct the fellow accused, namely, Padam Sharma and cheques amounting to Rs.71 lakh, as well as blank documents and affidavit were got procured from him.

Learned counsel for the petitioner submits that there is business dispute between the parties concerned and the present FIR is the misuse of the same. It is only the civil dispute between the parties relating to the settlement of the accounts.

Notice of motion.

Mr. Vivek Saini, Additional Advocate General, Haryana, accepts notice on behalf of respondent-State and Mr. Abhimanyu Singh, Advocate, has made appearance on behalf of the complainant.

Learned State Counsel seeks time to file written *response.*

On his request, the matter is adjourned to 11.08.2021.

In the meantime, considering the civil clippings as evident from the contents of the FIR, the event of arrest, the petitioner shall be released on interim bail, to the satisfaction of the Arresting Officer. However, the petitioner shall join the investigation, as and when directed by the investigating agency and shall abide by the terms and conditions as laid down under Section 438(2) Cr.P.C."

Learned counsel for the petitioner has vehemently argued that the present case is apparently a civil dispute and is sought to be given a criminal colour. It has been submitted that in fact, it is the family of the petitioner who had given a loan to the complainant for an amount of Rs.17,15,000/-. In the FIR, the allegations have been made against one Padam Sharma who even as per the version of the complainant had been working with the complainant since the last 25 years and who was stated to be a confidant of the complainant. Further, reference has been made to the fact that even the alleged cheques amounting to Rs.41,31,707/-, were given by the said Padam Sharma. It has further been submitted that the petitioner has joined the investigation and the entire dispute is on the basis of documents and thus, the custodial interrogation of the petitioner is not required in the present case.

On the other hand, Mr. Deepak Sabherwal, Addl. A.G. Haryana and Mr. Abhimanyu Singh, Advocate for the complainant have appeared and have also vehemently argued that the present case is a classic case of criminal breach of trust inasmuch as the petitioner was an employee of the complainant alongwith Padam Sharma. It has further been argued that the complainant wanted to expand his business in Nepal and, therefore, got the sole Proprietorship incorporated as "Parth Plywood Traders" in the name of Padam

Sharma. It has been argued that the present petitioner-Umesh Madaan was the authorized signatory of abovesaid sole Proprietorship as well as of the bank account and thus, it has been submitted that the petitioner is apparently involved in the act of duping the complainant. It has also been argued that there is apprehension that the petitioner may leave the country and go to Nepal as the family members of the petitioner have already left for Nepal.

Learned counsel for the petitioner has sought to rebut the abovesaid contentions by referring to page 97 of the paper book and has stated that the petitioner was never the authorised signatory of the said firm but as has been recorded in para 5 of the order dated 04.02.2021 vide which the anticipatory bail of the petitioner was rejected, the petitioner was the authorised signatory on behalf of Parth Plywood Traders of a bank account only.

Learned counsel for the petitioner has sought to explain the same by stating that since the family of the petitioner had given a loan of Rs.17.50 lacs to the complainant, thus, in order to secure the same, the petitioner was made authorised signatory of the bank account.

This Court has heard the learned counsel for the parties and have perused the record.

In the present case, there is a version given by the petitioner of the business dealings and there is another version which has been given by the complainant. In para 6 of the present petition, it has been stated by the petitioner that the complainant had started placing some orders with the firm of brother of the petitioner i.e. Amit Madaan and that the petitioner had no concern with the firm of his brother (Amit Madaan) or any commercial transaction with the complainant and thus, the case of the petitioner would be on a better footing than his brother-Amit Madaan. As per the FIR itself, it has been stated that an amount of Rs.17,50,000/- was paid by the accused persons (family of the petitioner) to the complainant, although it has been stated that the same was as security. The allegations have been made in the FIR with respect to the petitioner alongwith Padam Sharma who was the confidant of the complainant, having duped the complainant and having sold the goods of the complainant in Nepal without handing over the profits/sale proceeds regarding the same. However, the present case is based upon documentary evidence and thus, this Court is of the view that custodial interrogation of the petitioner is not required. Even the stand of the State and the complainant that the money has not been recovered, could not come in the way to grant anticipatory bail to the petitioner inasmuch as the registration of the FIR cannot be made a tool to recover the money.

Accordingly, the interim order dated 07.06.2021 is ordered to be made absolute.

The petition stands allowed.

The petitioner is directed to surrender his passport before the Investigating Officer and to leave the country only with the permission of the concerned Court.

Nothing stated above shall be construed as an expression of opinion on the merits of the case.

13.08.2021 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**