

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201)

CRM-M-20324 of 2020 (O&M)

Date of Decision: 01.03.2021

Satish Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sudhanshu Makkar, Advocate, for the petitioner.
Mr. B.S. Virk, DAG, Haryana
Mr. Tejeshwar Singh, Advocate, for the Revenue Department.

Amol Rattan Singh, J. (Oral)

Case heard by way of video conferencing.

CRM-5162-2021

Pursuant to the previous orders passed by this court, this application has been filed seeking to place on record the orders passed by the Supreme Court on 17.12.2020 and 08.02.2021, as Annexures R-2/2 and R-2/3, respectively, with a short affidavit of the applicant/complainant.

Learned counsel for the said applicant submits that earlier, vide CRM-18928-2020, another document has already been placed on record as Annexure R-2/1 (which is stated to be the confessional statement of another co-accused (not a petitioner herein), by the name of Rahul.

A perusal of the order of the Supreme Court, dated 17.12.2020, shows that after granting permission to file the SLP, notice was issued by the Apex Court, returnable within six days at that stage, and in the meantime it was ordered that the operation of the order impugned in that petition (dated 10.09.2020 passed by this court), would remain stayed.

Thereafter, in an interlocutory application filed in the same SLP (Crl.) no.6670 of 2020, the following order was passed by the Supreme Court on 08.02.2021.:-

“In view of doubts expressed, we clarify that the anticipatory bail application of the petitioner can be heard and decided on merits by the High Court, without waiting for the decision in the present petition.”

In view of the above, the present application is allowed, with a copy of the aforesaid orders ordered to be taken on record.

CRM-M-20324 of 2020

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of anticipatory bail, upon FIR no.0069, dated 10.02.2020, having been registered at Police Station Palam Vihar Lines, Gurugram, alleging therein the commission of offences punishable under the provisions of Sections 457, 380 of the IPC, with Section 34 thereof added subsequently in the FIR.

Various orders were passed by this court at different points of time, including one on September 10, 2020, by which this court had directed that the Department of Income Tax (Revenue) be impleaded as a respondent in this petition, in view of the fact that an amount of Rs.65 lacs was alleged to have been stolen but with no answer forthcoming at that time as to the source of the income.

Hence, this court was of the view that if the money in question that was alleged to have been stolen, was “unaccounted money”, then the complainant could not take aid of the State to recover that money; whereas

on the other hand if it was money duly accounted for, obviously legal recourse was available to him, with the investigating agency also, naturally, so available to try and get the money recovered.

Though no reply has been filed on behalf of the Income Tax Department, however, as per the instructions taken by the learned counsel appearing for the said Department at different points of time, some information had been gathered and other information was still to be received by the Revenue, as regards the source of income of the complainant.

In the meanwhile, the complainant herein had challenged the order of this court, dated 10.09.2020, before the Supreme Court, with that order having been stayed (as has already been noticed in an earlier order), with that order and subsequent order passed by their Lordships having been placed on record today, vide the application referred to herein above.

Consequently, as regards any information that the Department of Income Tax might have, this court is precluded from looking at it as the initial order impleading the Department itself has been stayed (but with the Supreme Court having clarified that as regards the petition seeking anticipatory bail, it could be decided in the meanwhile by this court without awaiting the outcome of the SLP).

That being so, learned counsel for the petitioner submits that even without adverting to any known source of income of the complainant, the petitioner has only been named as an accused on an alleged disclosure

statement made in police custody by his co-accused, Rahul, and that too not in his first statement but in his second disclosure statement, stated to have been made on 07.03.2020, to the effect that Rs.8 lacs and the jewellery that was stolen by Rahul and his co-accused Joginder, was given to the petitioner, who was a friend of Joginder, and that the petitioner had also kept the mobile phones of the parties, stating that they could be traced from those mobile phones and that he would destroy them on his own.

Upon query to Mr. Virk, learned DAG, Haryana, he submits that as per his instructions presently, he is not clear as to whether it was the second disclosure statement or the first, but with learned counsel for the complainant having pointed to the disclosure statement that he has already placed on record, it is seen that the opening lines are to the effect that ‘while amending his earlier confessional statement’ regarding the offence committed, the accused, Rahul, “re-confessed to the crime in police custody in the presence of certain witnesses as were shown in the statement” (the witness being a police official).

Mr. Makkar, learned counsel for the petitioner, submits that, therefore, in any case with no recovery having been made pursuant to any such disclosure statement, it is inadmissible in evidence and therefore with the petitioner not having any other criminal antecedents, this court would not refuse to admit him to anticipatory bail, with him completely denying any involvement with the crime, and admittedly he not being either of the two persons seen in the CCTV camera installed at the premises where the alleged theft/burglary took place.

Having considered the aforesaid contention, though learned counsel would obviously be right to the extent that any statement made in police custody, without a recovery made, may not otherwise be admissible in evidence; however, a recovery of Rs.48 lakhs on Rahuls' statement having been made from himself (Rahul), and Rs.6 lacs from Joginder and Rs.1 lac from Rajesh (all co-accused), on the disclosure made by Rahul (as per the affidavit of the Assistant Commissioner of Police, Crime, Gurugram, dated 07.08.2020) for the purpose of this petition at least, filed under the provisions of Section 438 of the Cr.P.C., it would be difficult not to accept that statement, with even jewellery as was alleged to have been stolen (recorded in the FIR), stated to be also lying with the petitioner, Satish, as per the aforesaid disclosure statement.

Mr. Makkar has also submitted that in fact no amount of money at all was mentioned in the FIR, as was alleged to have been stolen, and consequently, in any case an amount of Rs.8 lacs ever being actually given to the petitioner, cannot be believed simply on the statement of Rahul, who might have kept the money with himself and simply named the petitioner to rope him in.

Upon query to learned counsel as to why, when Rahul, as per the investigating agency got recovered Rs.48 lakhs from himself, would rope him in, and why he would be even roped in by the police, with him not having any other criminal antecedents, he submits that it may be on account of any enmity either between him and Joginder, or otherwise.

Having considered the matter, since (to repeat), with the source

of money available with the complainant, as could have been stolen (Rs.65 lacs as alleged), not to be gone into by this court after the order of the Apex Court staying the order dated 10.09.2020, I would thereafter see no reason to entertain this petition any further, which is consequently dismissed in view of the recoveries made on the disclosure of the aforesaid Rahul.

The interim order passed in favour of the petitioner is hereby vacated.

However, obviously, all observations made in this order or in the previous orders passed, are only made in the context of this petition seeking the concession of 'pre-arrest bail', and would not be taken into consideration for any other purpose, and equally obviously, the trial (when/if it reaches that stage), would also proceed wholly on the basis of the evidence gathered/led.

01.03.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No