

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

CRM-M No.25900 of 2021

Date of Decision: 17-09-2021

Durganand Thakur

.....Petitioner

Versus

State of Haryana

.....Respondent

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Mohit Rathee, Advocate
for the petitioner.

Mr. Apoorv Garg, DAG, Haryana.

Mr. D.S.Matya, Advocate,
for the complainant.

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MEENAKSHI I. MEHTA, J.

The petitioner herein seeks the relief of regular bail under Section 439 Cr.P.C and also claims the default bail under Section 167(2) Cr.P.C in the criminal case pertaining to the FIR bearing No.392 dated 09.10.2020 registered at Police Station Sector 17-18 Gurugram, under Sections 406, 420, 467, 468, 471, 201 & 120-B IPC.

2. The allegations, as levelled in the subject FIR, are that the co-accused of the petitioner named Amber Aggarwal, was employed as Assistant Manager (Accounts) in the complainant-Company (for short "the complainant") and as such, being the custodian of its (complainant's) cheque books etc., he deposited the amounts of the cheques, issued by it for the payment thereof to some of its dealers/suppliers, in the bank

accounts got opened by him in the names of fake and fictitious companies and misappropriated the same and during the investigation, it was revealed that some of the amount, so embezzled, was transferred by him in the bank account of the petitioner.

3. I have heard learned counsel for the petitioner as well as learned State counsel (assisted by learned counsel for the complainant) in this petition and have also perused the file thoroughly.

4. Learned counsel for the petitioner has contended that the only role attributed to the petitioner in this case is that his afore-named co-accused had allegedly transferred certain amounts, embezzled by him, in his (petitioner's) bank account and mere this fact does not suffice to array the petitioner as an accused in this case and therefore, he deserves the relief of regular bail.

5. However, learned State counsel has argued that the petitioner was also an employee of the complainant and his mobile phone number was registered in one of its (complainant's) bank accounts and this fact, itself, shows the involvement of the petitioner in the crime and in view of the gravity of the offence committed by him along-with his co-accused, this petition be dismissed.

6. It has categorically been mentioned in para 2 of the Reply filed on behalf of the respondent-State, by way of the affidavit of the Assistant Commissioner of Police, Gurugram, that after clarifying the bank details, it was found out that the petitioner, in connivance and collusion with his said co-accused, had committed fraud with the complainant and

had, fraudulently, received a sum of Rs.70,94,251/- by creating fake bank accounts and in para 3 thereof, it has been deposed that the mobile phone number of the petitioner was registered with the bank accounts of the complainant as well as of one of the said fake companies and the above-named co-accused of the petitioner had transferred the amounts of Rs.27,40,000/- from his personal bank account and of Rs.31,54,251/- and Rs.12,00,000/- from the bank accounts of two fake companies, in the bank account of the petitioner. In view of the above-mentioned contents of the said Reply as well as the gravity of the allegations levelled against him, the petitioner does not deserve the relief of regular bail.

7. Learned counsel for the petitioner has also pointed out that the petitioner was arrested on 21.02.2021 and though, the Challan (Annexure P-2) was presented in the Court on 29.04.2021 but the report of the FSL had not been annexed therewith and it had also been mentioned therein that the investigation was continuing and some more facts might come on the record and therefore, the supplementary charge-sheet would be presented under Section 173(8) Cr.P.C. and he has contended that in these circumstances, it is explicit that the Challan, so presented, was incomplete and hence, the petitioner is entitled to the default bail, as envisaged under Section 167(2) Cr.P.C, on this score. To buttress his contentions, he has placed reliance upon “Fakhrey Alam vs. State of Uttar Pradesh Criminal Appeal No.319 of 2021 Decided on 15.03.2021 (SC); Ajit Singh alias Jeeta & Another vs. State of Punjab, Criminal Revision No.4659 of 2015(O&M) Decided on 30.11.2018 (P&H)(DB) and

JulfKar vs. State of Haryana, Criminal Revision No.1125 of 2020,

Decided on 16.09.2020 (P&H) (SB).

8. Per-contra, learned State counsel (assisted by learned counsel for the complainant) has argued that though it has been mentioned in the Challan that the report qua the comparison of the handwriting and specimen signatures of the afore-named co-accused of the petitioner, was still awaited from the CFSL, Bhondsi and on its receipt, the same would be enclosed therewith but however, the Challan, as presented in the Court, contains sufficient material against the petitioner and it being so, the same cannot be construed to be incomplete. He has also placed reliance upon *Abdul Azeez P.V. and Others vs. National Investigation Agency, Special Leave Petition (Criminal) No.7733 of 2014 Decided on 14.11.2014 (SC)* in support of his arguments.

9. Concededly, the Challan was presented in the Court within the prescribed/stipulated period. Though the factum of the FSL report having not been received till the time of its presentation finds mention in the same and it has also been submitted therein that the investigation was continuing and on the completion thereof, a supplementary Challan under Section 173(8) Cr.P.C would be presented but it has been held by Hon'ble the Supreme Court in *Abdul Azeez P.V. case (supra)* that "*where the charge-sheet was submitted within 180 days pending further investigation, then merely because certain facets of the matter called for further investigation, it did not deem such report anything other than a final*

report and the accused was not entitled to the statutory bail under Section 167(2) Cr.P.C."

Moreover, in **Suresh Kumar Bhikam Chand Jain vs. State of Maharashtra and another, SLP (Criminal) No.147 of 2013 Decided on 13.02.2013**, the three Judges' Bench of the Apex Court has categorically observed that *"where a public servant was arrested under the provisions of Prevention of Corruption Act and the investigation was conducted without the sanction of the Competent Authority and the charge-sheet was filed within the stipulated period of 90 days but the cognizance was not taken by the Magistrate for want of sanction, the accused was not entitled to bail under Section 167(2) Cr.P.C and the filing of the charge-sheet was sufficient compliance with the provisions of Section 167(2)(a)(ii) Cr.P.C in the case and whether cognizance was taken or not was not material as far as Section 167 Cr.P.C was concerned"*.

The case in hand is squarely covered by the observations as made by Hon'ble the Supreme Court in both these cases and in the light of the same, it is explicit that the Challan presented in the Court without the FSL report and with the submission therein that a supplementary charge-sheet/Challan would be filed on the completion of the investigation, cannot be held to be incomplete, so as to entitle the petitioner to the default bail and it being so, the verdicts rendered by the Division Bench in **Ajit Singh's case (supra)** and the Single Bench of this Court in **Julfkar's case (supra)** will be of no help to the petitioner to seek the default bail.

10. The observations made in **Fakhrey Alam case (supra)** are

also of no avail to the petitioner to claim the statutory/default bail as the facts and circumstances of the case in hand are distinguishable from those of the cited above because in the said case, the offence under UAPA Act was also involved besides the offences under IPC and the Arms Act and the appellant was arrested on 08.03.2017 and vide the order dated 03.06.2017, learned Chief Judicial Magistrate had granted a total period of 180 days to the police to file the charge-sheet and the same was filed on 04.09.2017 under all other above-said provisions except under the UAPA Act as the requisite sanction had not been received till then and after the receipt of the said sanction from the State Government, the second Charge-sheet was filed on 05.10.2017 after the lapse of 211 days, i.e beyond the period of 180 days and therefore, the Apex Court observed that the charge-sheet under the provisions of law, as originally filed on 04.09.2017, was required to be filed within 90 days but was actually filed within 180 days on the premise of the charge under Section 18 of the UAPA Act but however, no charge-sheet was filed even within 180 days under the UAPA Act but post filing of the application for default bail, it was filed after 211 days and thus, undoubtedly, the period of 180 days to file the charge-sheet qua the UAPA Act, had elapsed whereas in the instant case, as mentioned earlier, the Challan has been submitted within the prescribed period.

11. Keeping in view all the above-discussed facts and circumstances, this Court is of the considered opinion that the petitioner neither deserves the relief of regular bail nor is entitled to the default/statutory bail.

Resultantly, the instant petition stands dismissed accordingly.

17th September , 2021
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes