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

CRM-M-28212-2020 (O&M)
Date of Decision:- 8.3.2021

Vishal Rameshbhai Gandhi … Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Harkesh Manuja, Advocate with
Mr. Mohit D. Ram, Advocate for the petitioner.

Ms. Sheenu Sura, DAG, Haryana
assisted by ASI Pawan.

Ms. Supriya Arora, Advocate/complainant-in-person.

(Proceedings conducted through video conferencing)

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GURVINDER SINGH GILL, J.

1. This order shall dispose off a petition filed on behalf of Vishal Rameshbhai Gandhi seeking grant of regular bail in a case registered vide FIR No.72 dated 15.5.2020 under Sections 406/420 IPC at Police Station Sector 37, District Gurugram.

2. The FIR in question was lodged at the instance of Supriya Arora wherein it is alleged that on 7.5.2020, she contacted Sagar, who claimed himself to be a partner of M/s Rythm Divine Healthcare, Ahmedabad, on his mobile phone No.9374540857, which deals in face masks as the complainant was interested in purchasing face masks on account of spread of pandemic COVID-19. The complainant's husband Abhisek Verma was also having

business of surgical equipment under the name and style of S.P. Surgical Equipment, Chennai. Since the complainant and her husband were scared to have any business dealing in Ahmedabad as they did not know anybody out there, Sagar introduced them to one Ashish in Gurugram stating that Ashish is his business partner. The complainant sent their associate Jaipreet Singh to meet Ashish and to inspect the stock at the site where he met Ashish and Rajat Deep. However, Ashish and Rajat Deep told Jaipreet that some token money would be required before inspecting stock and making video of the stock. When Jaipreet again met Ashish, he paid an amount of ₹ 4 lacs in cash and after taking the money, Ashish took Jaipreet to residence of Rajat Deep who was residing in Dwarka. Jaipreet made a video of the stock lying therein. Rajat Deep told Jaipreet that they have received an amount of ₹ 4 lacs and that the balance amount is to be paid in the account of M/s Rythm Divine Healthcare through Vishal and Sagar. Consequently, the complainant transferred another amount of ₹ 2 lacs from her personal savings account. Later, on 8.5.2020 and 11.5.2020, more amount was transferred in the account of M/s Rythm Divine Healthcare from current account of company of complainant's husband M/s S.P. Surgical Equipment and as such a total ₹ 44,60,000/- was transferred to the account of M/s Rythm Divine Healthcare, Ahmedabad. Thus, in all an amount of ₹ 86,025/- remained unpaid. Accordingly, the complainant sent her transport person to the site from where the stock was to be collected but the accused totally denied having received any money and did not give any masks. The complainant alleged that Rajat Deep claimed to be highly influential and had been threatening her and his father was a retired Commissioner and that he has good links with higher officials. The complainant, thus, alleged that Rajat Deep, Ashish, Vishal and Sagar had all cheated her and had deprieved her of huge money on the pretext of giving stock of face mask but they neither give the face mask nor had refunded the money.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been involved in the present case and that even if the allegations as levelled in the FIR are taken to be correct, still it is borne out that the petitioner had never interacted with the complainant. The learned counsel has submitted that the complainant, on the asking of co-accused Ashish had transferred an amount of Rs.44,10,000/- in the account of petitioner's company i.e. M/s Rythm Divine Healthcare for the purpose of buying Face Masks and the petitioner firm had immediately transferred the amount to the manufacturing firm of Ashish i.e. M/s Rawdolate Company. The learned counsel has referred to account statement of company's bank account from which the following transaction can be discerned :-

S. No.	Transaction Method	From the account of	To the account of	Amount transferred
1.	NEFT	Suprya Arora	Rhythm Health Care	1,00,000 (07.05.2020)
2.	NEFT	Suprya Arora	Rhythm Health Care	20,000 (07.05.2020)
3.	NEFT	Suprya Arora	Rhythm Health Care	30,000 (07.05.2020)
4.	NEFT	S.P.Surgical Equipment	Rhythm Health Care	20,40,000 (08.05.2020)
5.	NEFT	S.P.Surgical Equipment	Rhythm Health Care	3,20,000 (08.05.2020)
6.	NEFT	S.P.Surgical Equipment	Rhythm Health Care	4,50,000 (08.05.2020)
7.	NEFT	S.P.Surgical Equipment	Rhythm Health Care	9,00,000 (11.05.2020)
8.	NEFT	S.P.Surgical Equipment	Rhythm Health Care	1,00,000 (11.05.2020)
9.	NEFT	S.P.Surgical Equipment	Rhythm Health Care	4,50,000

				(11.05.2020)
Total amount transferred				44,10,000/-
Total of the Invoice				49,46,025/-
Total amount due				5,36,025/-

S. No.	Transaction Method	From the account of	To the account of	Amount transferred
1.	NEFT	Rhythm Divine Health Care	Ashish Kumar (Rawdolate Company)	1,00,000 (07.05.2020)
2.	NEFT	Rhythm Divine Health Care	Ashish Kumar (Rawdolate Company)	1,00,000 (07.05.2020)
3.	NEFT	Rhythm Divine Health Care	Ashish Kumar (Rawdolate Company)	10,00,000 (08.05.2020)
4.	NEFT	Rhythm Divine Health Care	Ashish Kumar (Rawdolate Company)	3,00,000 (08.05.2020)
5.	NEFT	Rhythm Divine Health Care	Ashish Kumar (Rawdolate Company)	6,00,000 (08.05.2020)
6.	NEFT	Rhythm Divine Health Care	Ashish Kumar (Rawdolate Company)	10,00,000 (11.05.2020)
7.	NEFT	Rhythm Divine Health Care	Ashish Kumar (Rawdolate Company)	5 X 2,00,00 (11.05.2020)
Total amount transferred				41,00,000/-
Total of the Invoice				41,76,112/-
Total amount due				76,112/-

4. It has thus been submitted that while the petitioner does not deny having received the amount in his bank account from the complainant but he had passed on the same to Rawdolate Company belonging to Ashish as would be evident from the bank transactions through NEFT conducted between 7.5.2020 and 11.5.2020. The learned counsel has submitted that although Ashish through his company Rawdolate Company had received an amount of ₹ 41 lacs from the company of the petitioner as against the proforma invoice dated 7.5.2020 (Annexure P-5) for an amount of ₹ 41,76,112/- but Rawdolate Company did not supply the face masks as had been ordered and

that as such, it is Rawdolate Company and its partners/proprietors etc. who can be held liable for having usurped the amount in question.

5. Opposing the petition, the learned State counsel assisted by counsel for the complainant has submitted that the petitioner was hand in gloves with the other accused for defrauding the complainant and since the petitioner had voluntarily received huge amount of ₹ 44 lacs approximately from the complainant, he cannot plead innocence by taking a plea that he merely acted as a conduit. The learned State counsel has, however, not disputed the fact that the petitioner as on date has been behind bars since the last more than 6 months and that challan already stands presented against him.

6. I have considered rival submissions addressed before this Court.

7. Having regard to the facts and circumstances of the case wherein this Court finds that out of the amount of about ₹44 lacs as received by the company of the petitioner i.e. M/s Rythm Divine Healthcare, Ahmedabad, an amount of ₹41 lacs stood transferred to the account of Rawdolate Company owned by Ashish during the same very period i.e. between 7.5.2020 to 11.5.2020, it would indicate that it is infact Ashish, who is the main accused, though the petitioner may also have joined hands with him for defrauding the complainant. In any case, since the petitioner has been behind bars since the last more than 6 months and challan already stands presented, further detention of the petitioner will not serve any useful purpose.

8. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

9. The aforesaid order of grant of regular bail shall, however, be subject to the condition that the petitioner deposits an amount of ₹ 5 lacs (five lakhs) before the trial Court/Illaqa Magistrate within 2 weeks from today. The said amount may be deposited in the shape of some FDR which the petitioner shall not be entitled to encash without the permission of the Court. The trial Court shall issue directions to the bank concerned in this regard. However, upon the final decision of the matter, the said proceeds of the FDR shall be released in favour of the complainant in case the allegations are found to be substantiated and in favour of the petitioner in case the allegations are found to be false qua the petitioner.

8.3.2021 **(Gurvinder Singh Gill)**
kamal **Judge**

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