IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33202-2020 (O&M)
Date of decision : 01.09.2021

Joginder Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. B.S. Rana, Sr. Advocate with
Mr. Aman Pal, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Satvik Verma, Sr. Advocate with
Mr. Harsh Gokhale, Advocate and
Ms. Drishti Harplani, Advocate for the respondents.

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VIKAS BAHL, J.

Prayer in the present petition filed under Section 439(2) of Cr.P.C. read with Section 482 of Cr.P.C. is for cancellation of pre-arrest bail granted to respondent Nos.3 to 5 vide order dated 01.10.2020 (Annexure P-11) by the Sessions Judge, Rewari in FIR No.63 dated 17.02.2020 registered under Sections 420, 406, 120-B and 34 of the Indian Penal Code, 1860, at Police Station Dharuhera, District Rewari (Annexure P-2).

The petitioner had got the abovesaid FIR (Annexure P-2) registered on the allegations that he was one of the Directors of M/s Yashu Iron Private Limited and that respondent Nos.3 to 5 i.e. Amit Sureshmal

Lodha, Sureshmal Lodha and Indu Lodha respectively alongwith M/s Indsur Global Limited, had themselves admitted in the letter dated 20.11.2019 that the Board of Directors of the abovesaid company has been suspended by the National Company Law Tribunal (hereinafter to be referred as “the NCLT”) vide order dated 24.09.2019 but, however, in spite of the same, they had placed two purchase orders on 17.10.2019 amounting to Rs.68,44,000/- and Rs.34,22,000/- respectively and had also signed two post dated cheques with regard to the same. It is further alleged that even prior to 24.09.2019, three different purchase orders have been placed by the accused persons with the complainant-company and the payment regarding the same had not been made. Although, supplies with respect to the same had been made. It has been alleged that the accused persons had the intention of cheating which fact was clear from placing of the two purchase orders dated 17.10.2019 after the appointment of the Interim Resolution Professional (hereinafter referred to as “IRP”) on 24.09.2019 by the NCLT, Mumbai. It is further alleged that the accused persons had never informed the complainant or his company regarding the matter pending before the NCLT, Mumbai and that Section 14 of the Insolvency and Bankruptcy Code, 2016 clearly puts a complete bar on the company or its directors to enter into or do any transaction for and on behalf of the company in question. It is also alleged that post dated cheques were issued and the material was supplied with respect to purchase orders prior to 24th September 2019.

Sessions Judge, vide a detailed order dated 01.10.2020, which has been impugned in the present petition, granted the concession of anticipatory bail to respondent Nos.3 to 5 herein. A perusal of the said order would show that it was observed that immediately when respondent Nos.3 to 5 came to know the actual impact of the order dated 24.09.2019, they cancelled the two purchase orders dated 17.10.2019 and no goods were ever supplied in pursuance of the abovesaid two orders, to them or to the company in question. It was further observed that the accused persons never placed any orders after passing of the order dated 24.09.2019 except the two purchase orders dated 17.10.2019 which were cancelled. It was also observed that the complainant company had already filed the claim before the NCLT and all the documents relating to the transaction are in the office of company which has been taken over by the IRP and are under his control and custody. It was further observed that respondent Nos.4 and 5 herein are more than 70 years of age and were not even the active Directors of the company and that the whole case was based on documentary evidence and, therefore, the custodial interrogation of the petitioners/respondent Nos.3 to 5 herein was not required and thus, the concession of anticipatory bail was granted to respondent Nos.3 to 5 herein,subject to the condition of furnishing bonds to the satisfaction of the Investigating Officer/Arresting Officer and with a further condition that they shall not leave the country without the prior permission of the Court and they shall not make any inducement/threat/promise to any person acquainted with the facts of the case and shall join further investigation as and when required.

Aggrieved against the abovesaid order, the complainant-Joginder Singh, has filed the present petition for cancellation of the pre-arrest bail granted to Respondent Nos. 3 to 5 herein.

Learned Senior Counsel appearing for the petitioner has vehemently argued that in spite of the passing of the order dated 24.09.2019, the accused persons had placed two purchase orders dated 17.10.2019 and from the said fact alone, it is apparent that respondent Nos.3 to 5 had a fraudulent intention. Further reference has been made to the order dated 24.09.2019 to show that the accused company could not even defend the claim of Rs.61,19,000/- in the IBC proceedings and thus, should not have placed the orders in question. However, learned Senior Counsel has very fairly stated that neither any delivery was made in pursuance of the order dated 17.10.2019 nor any amount was due on the said account but has highlighted that even after 24.09.2019, with respect to the orders which were placed prior to 24.09.2019 i.e. on 09.07.2019 (Annexure P-3, Page 21 of the paper book), on 03.08.2019 (Annexure P-3, Page 23 of the paper book) and on 09.09.2019 (Annexure P-3, Page 25 of the paper book), the supplies were received on 25.09.2019, 27.09.2019 and 03.10.2019, respectively. It is submitted that out of the total outstanding amount of Rs.2,22,69,193/- only the payment of Rs.37,18,907/- has been paid and thus, the outstanding amount of Rs.1,85,50,286/- is still due from the accused persons. It is also submitted that certain post dated cheques were issued in favour of the complainant company and since the same have been dishonoured, thus, a petition under Section 138 of the Negotiable Instruments Act, 1881, has also been filed, which is pending adjudication. Reference has been made by the learned Senior Counsel for the petitioner to the application for bail filed by respondent Nos.3 to 5 herein (Annexure P-9), moreso to para 3 of the application, wherein it has been stated that the order of the NCLT was made available to the accused persons on

14.10.2019 and further reference has also been made to para 12 of the application to show that even as per the case of respondent Nos.3 to 5, they have stated that they have never received any material after 05.10.2019. The argument sought to be raised is that the said averment would imply that the goods were received by the accused company/persons prior to 05.10.2019. It has been further argued that the impugned order is perverse inasmuch as reference has been made to the letter dated 23.10.2019, although there is no such letter on record, and even the observation to the effect that the present dispute is a dispute of rendition of accounts between the parties is also perverse as the present dispute cannot be said to be a dispute of rendition of accounts. It is also argued that the accused persons have neither got the money nor the supply recovered.

Learned Senior Counsel for the petitioner has placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Brij Nandan Jaiswal Vs. Munna @ Munna Jaiswal and another,*** reported as ***2009(1) RCR (Criminal) 529***, to contend that it is always open for the complainant to question the order granting the bail if the order is not validly passed. Para 7 of the said judgment is reproduced hereasunder:-

> "*7. It is now a settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail. However, we find from the order that no reasons were given by the learned Judge while granting the bail and it*

seems to have been granted almost mechanically without considering the pros and cons of the matter. While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary."

Further reliance has also been placed on the judgment of the Hon'ble Apex Court in ***Sudhir Vs. State of Maharashtra and another*** and other connected matters reported as ***2015(4) RCR (Criminal) 649***. Para 13 of the said judgment, which has been relied upon, is reproduced hereinbelow:-

"13. Having considered the submissions made by learned counsel for the parties and after considering the gravity of the offence, circumstances of the case, particularly, the allegations of corruption and misappropriation of public funds released for rural development, and further considering the conduct of the appellants and the fact that the investigation is held up as the custodial interrogation of the appellants could not be done due to the anticipatory bail, we are of the opinion that the High Court has rightly cancelled the anticipatory bail granted to the appellants by the Additional Sessions Judge, Jalgaon. Therefore, we are not inclined to disturb the same."

On the basis of the above submissions, it has been submitted that the impugned order should be set aside and the anticipatory bail granted to respondent Nos.3 to 5 should be cancelled.

Learned counsel for the State has submitted that respondent Nos.3 to 5 have not joined the investigation and thus, has also supported the case of the petitioner by stating that the impugned order should be set aside.

On the other hand, learned Senior Counsel appearing for the respondents has submitted that the primary allegation in the FIR was with respect to the accused persons having placed two purchase orders on 17.10.2019 but, however, the said allegation falls flat as both the said purchase orders were admittedly cancelled. It is stated that even as per the case of the prosecution, no goods in pursuance of the said purchase order dated 17/10/2019 were supplied to the accused persons. It is also argued that the accused persons had informed the company of the petitioner about the passing of the order by the NCLT, Mumbai. Reference in this regard has been made to letter dated 30.10.2019 (Annexure P-6) which is attached with the present petition itself, as per which, it is the accused persons who have informed the complainant company about the passing of the order by the NCLT and the factum that since the Board of Directors stood suspended, the cheques which had been issued were not to be presented. To the similar effect is the letter dated 20.11.2019 (Annexure P-7, Page 40 of the paper book). Learned Senior Counsel has further submitted that the order dated 24.09.2019 was uploaded on the website only in the second week of October, 2019 and immediately after understanding the true import of the Order, the purchase order dated 17.10.2019 was cancelled and the above-said letters dated 30.10.2019 and 20.11.2019 were written.

Learned Senior Counsel has also referred to Annexure R-3/4 attached alongwith the reply filed on behalf of respondent Nos.3 to 5, which shows the List of Creditors as on 24.09.2019 and has highlighted the fact that the complainant company had lodged its complaint before the IRP and its name figures at Sr. No.4 in Column No.B under the heading“Operational Creditors” and the amount claimed by the company of the Petitioner is

Rs.1,85,50,287/-. It is submitted that the said amount, if due, is against the company and not individually against respondent Nos.3 to 5 and since in the said company, IRP has been appointed, it would be open to the complainant company to pursue the said claim with him. Further reference has also been made to Annexure R-3/6 to show that even in the independent forensic audit of the accused company, no fraud was found as per the provisions of IBC, 2016. Reference has also been made to the purchase orders (Annexure P-3) dated 09.07.2019, 03.08.2019 and 09.09.2019 to show that the said purchase orders were in the name of the accused company and not in the individual names of the answering respondents and thus, the goods which have been received in pursuance of the said purchase orders belong to the accused company whose assets are at present in the custody and control of the IRP. It is submitted that on the basis of the said purchase orders, the complainant company had submitted its claim.

With respect to the aspect of non-joining of investigation, reference has been made to order dated 04.01.2021 (Annexure R-3/1) passed by the Sessions Judge, Rewari, vide which an application for cancellation of bail of applicants/accused/respondent Nos.3 to 5 herein, moved by the prosecution was withdrawn in view of the fact that they have already joined the investigation.

It is further submitted that the answering respondents are always ready and willing to join the investigation and to cooperate with the Investigating Officer and that the entire dispute in the present case is based on documents and thus, the custodial interrogation of the answering respondents is not required. It is also submitted that even as per the case of the prosecution, there were business dealings between the complainant company and the accused persons and thus, the present civil dispute is sought to be given a criminal flavor. It is further submitted that the order passed by the Additional Sessions Judge is well reasoned and a detailed one and a period of 8 months has elapsed since the passing of the same and there are no allegations against the answering respondents that they are either trying to influence the witnesses or have misused their concession of anticipatory bail granted. It is further submitted that the principles governing the grant of bail are different from the principles on which bail already granted would be cancelled. To substantiate the same, the Learned Senior Counsel has relied upon the judgment passed by the Hon'ble Apex Court in ***Mahant Chand Nath Yogi Vs. State of Haryana***, reported as ***2003 (1) SCC 326***. Reference has also been made to ***Dolat Ram and others Vs. State of Haryana*** reported as ***1995(1) SCC 349***.

This Court has heard learned counsel for the parties and perused the record and is of the opinion that the present petition deserves to be dismissed and the order dated 01.10.2020 passed by the Sessions Judge, Rewari deserves to be upheld.

The Hon'ble Apex Court in Mahant Chand Nath Yogi (Supra) has observed in Paragraph 17 as under:

> "*17. This Court in Subhendu Mishra v. Subrat Kumar Mishra and another (2000 SCC (Cri) 1508) following the principles stated in Dolat Ram and others v. State of Haryana, [(1995) 1 SCC 349] has reiterated that there is a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already*

> *granted. Normally, very cogent and overwhelming grounds or circumstances are required to cancel the bail already granted. In the present case, the High Court, it appears, did not bear the distinction in mind and cancelled the bail in a mechanical manner."*

It has been held that there is a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted. Normally, very cogent and overwhelming grounds or circumstances are required to cancel the bail which has already been granted. This Court has perused the impugned order dated 01.10.2020 passed by the Sessions Judge, Rewari (Annexure P-11) and find that the said order is a speaking one and has been passed after considering all the relevant factors.

It has been observed in the impugned order that the two purchase orders dated 17.10.2019, which were placed on behalf of the accused-company had been cancelled on learning of the actual impact of the Order passed by the NCLT, Mumbai and no goods were ever supplied to the accused persons by the complainant party on the basis of the above two orders. The said fact is not disputed before this Court. It is further observed in the impugned Order that all documents relating to the case are in the office of the accused-company which is now under the control of the IRP. It was also observed that the custodial interrogation is not required because the entire case is based upon documentary evidence. Conditions with respect to furnishing of bonds to the satisfaction of the Investigating Officer and not to leave the country without prior permission of the Court and other conditions have also been imposed. The Sessions Judge, Rewari has referred to the facts of the case as well as, arguments raised by both sides and has granted anticipatory bail by a reasoned order. This Court finds that there is no circumstance much less, strong or overwhelming circumstance to set aside the impugned Order.

It is further observed that with respect to every argument raised/allegation made by the Learned Senior Counsel for the Petitioner, there is a plausible argument/defence put forth by the Learned Senior Counsel for the Respondent No. 3 to 5. With respect to the argument on behalf of the Petitioner that the two purchase orders were given on 17.10.2019, i.e. after the passing of the Order dated 24.09.2019, it has been argued on behalf of the Respondent no 3 to 5 that admittedly, no goods were received in pursuance of the same and the said orders were cancelled after the Order passed by the NCLT, Mumbai was uploaded on the website and the true impact of the same was understood and in case, the accused persons had any fraudulent intention, then they would not have written Letters dated 30.10.2019 and 20.11.2019 informing the complainant-company about the passing of the aforesaid orders.

With respect to the allegation that the goods were also received on 25.09.2019, 27.09.2019 and 03.10.2019, the defense put up is that the same were with respect to purchase orders dated 09.07.2019, 23.08.2019 and 09.09.2019 (Annexure P-3), which were prior to the passing of the Order of the NCLT, Mumbai, the copy of which order was only made available on the website in the second week of October after which no supplies were received. At any rate, the said orders were placed in the name of the accused-company and not in the individual names of the Respondent

Nos. 3 to 5 and all the supplies made would be a part of the assets of the accused-company which is under the control and custody of the IRP and regarding which the claim to the tune of Rs.1,85,50,287/-has already been made by the complainant company, as is apparent from Annexure R-3/4, and its name figures at Sr. No.4 in Column No.B which deals with "Operational Creditors". Thus, the said aspect is stated to be a matter of adjudication by the IRP.

With respect to the allegation that the money has not been paid for the sales made and the cheques which have been issued have been dishonoured, the defense raised is that since admittedly the cheques in question were post dated cheques, however, bearing dates subsequent to 24.09.2019 (Annexure P-4), thus, could not have been credited as by the said date the Board of Directors stood suspended and the said fact was brought to the notice of the complainant-party vide letter dated 30.10.2019 and 20.11.2019 (P-6 and P-7 respectively). It is further the defense that the cheques were issued along with the purchase orders which were prior to 24.09.2019 and on the said date the concerned respondent was authorized to issue the same and that since the purchases were made by the Company and not by Respondent nos. 3 to 5 in their personal capacity, thus, the remedy of the complainant-party for recovery of money is against the accused-company and at any rate, for the said purpose apart from the claim before the IRP, even complaints under Section 138 of the Negotiable Instruments Act, 1881, have been filed.

From the above, it is apparent that for every argument/allegation raised, there is a plausible argument/defense put up.

This Court does not wish to give an affirmative finding on the same, lest, it would prejudice the case of either of the parties. For the present, suffice it would to say, that the present case is based on documents and has civil tappings and the custodial interrogation of the Respondent Nos. 3 to 5 would not be required and there is no circumstance much less, overwhelming circumstance to interfere with the well-reasoned order passed by the Sessions Judge.

Before parting, this Court wishes to point out that the aspect of non-joining of investigation has been duly defended by the Respondent Nos. 3 to 5 by making a reference to the Order dated 04.01.2021 (Annexure R-3/1)vide which the prosecution had withdrawn their application for cancellation of bail by stating that the respondent nos.3 to 5 have joined the investigation. The relevant portion of the said order dated 04.01.2021 is reproduced hereinbelow:-

> "***State of Haryana Vs. Amit SureshmalLodha etc.***
>
> *Present:-* *Sh. Harpal Singh, Public Prosecutor for the State.*
> *ASI Sandeep Kumar, PS Dharuhera in person.*
> *Sh. Vivek Tanwar, counsel for the respondents/ accused.*
>
> *Sh. Vivek Tanwar, counsel for the respondents/accused appeared in person. ASI Sandeep Kumar with learned Public Prosecutor for the State vide his separate statement stated that the respondents in the present case have already joined into investigation and in view of the same, they do not wish to pursue with the application for cancellation of bail of applicants/accused Amit SureshmalLodha, SureshmalLodha and InduLodha and*

withdrawn the same. Heard. In view of the statement, present application for cancellation of bail stands dismissed as withdrawn. File be consigned to record room after due compliance.

January 04, 2021"

Moreover, the Learned Senior Counsel for Respondent nos. 3 to 5 has stated that the Respondent Nos. 3 to 5 are and will always be ready to join the investigation and to cooperate with the Investigating Officer. Further, a period of 8 months has elapsed since the passing of the impugned order and there are no allegations against the answering respondents that they are either trying to influence the witnesses or have misused the concession of anticipatory bail granted to them.

With respect to the Judgment of the Hon'ble Apex Court relied upon by the Learned Senior Counsel for the Petitioner in Brij Nandan Jaiswal's case (supra), this Court is in agreement with the argument raised by the Learned Senior Counsel for the Petitioner that the Order of the Sessions Judge can be tested on merits also. This Court has therefore, considered the totality of the case, including the merits, and has come to the conclusion that the impugned order granting anticipatory bail is detailed and has not been passed in a mechanical manner and thus, deserves to be upheld. The Petitioner has not been non-suited on the ground of maintainability and all the arguments raised have been considered on merits, however, keeping in view the law laid down by the Hon'ble Apex Court in Mahant Chand Nath Yogi's case (supra). With respect to the Judgment of the Hon'ble Apex Court in the case of Sudhir (supra) relied upon by the Learned Senior Counsel for the Petitioner, it is stated that the facts of the aforesaid case were completely different from the facts of the present case inasmuch as, in the aforesaid case there were serious allegations of criminal misappropriation of funds released for implementation of schemes of drinking water and the said allegations were against the accused therein working as executive engineer and sectional engineer in the Government Department and the aforesaid FIRs were registered only after enquiries were made under the direction of the Revenue Commissioner in which, the payment vouchers to a non-existent contractor were found to be false. Neither the public toilet was constructed nor any fencing was done. Further in the said case, the Addl. Sessions Judge, had first declined the grant of anticipatory bail and although, the bail application filed before the High Court was withdrawn yet in the second anticipatory bail application, the Addl. Sessions Judge, granted anticipatory bail. The High Court took a serious view of the said fact and cancelled the anticipatory bail and it is the said order which was challenged before the Hon'ble Apex Court. While dismissing the appeal, the Hon'ble Supreme Court observed that in the case in question, there are serious allegations of misappropriation of public funds and corruption and thus, upheld the order of the High Court. The facts of the present case are substantially different inasmuch as,even as per the case of the prosecution, there were business dealings between the complainant company and the accused persons and the case has civil tappings and there is no allegation of misappropriation of public funds nor the provisions of the Prevention of Corruption Act, 1988 are attracted in the present case, nor the Respondent Nos. 3 to 5 conducted themselves in the manner as the accused in the above-cited case had.

Even the argument raised by the learned Senior Counsel that the observation made by the Sessions Judge in the impugned Order to the effect that two purchase orders were cancelled vide letter dated 23.10.2019, is incorrect,inasmuch as there is no such letter dated 23.10.2019 is inconsequential inasmuch as it is the admitted case of the parties that the said purchase orders dated 17.10.2019 were in fact cancelled and no goods were ever supplied to the accused persons.

Keeping in view the abovesaid facts and also the legal position, this Court feels that the order passed by the Sessions Judge dated 01.10.2020 (Annexure P-11) is legal and in accordance with law and that there is no ground much less cogent or overwhelming ground to set aside the same and to cancel the anticipatory bail granted to respondent Nos.3 to 5, thus, the present petition stands dismissed and order dated 01.10.2020 (Annexure P-11) is upheld.

It is however, clarified that the observations made in the present order is only for the purpose of deciding the present petition for cancellation of anticipatory bail and should not be construed as an expression on the merits of the main case/trial/ancillary proceedings which would be considered and decided independent of the observations made in the present order.

01.09.2021 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No