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

CRM-M No.37095 of 2020 (O&M)
Date of Decision: 03.03.2021

Bhagwan Dass Gupta
......Petitioner

Vs

State of Haryana
.....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Gaurav Singla, Advocate
for the petitioner.

Mr. Anant Kataria, D.A.G., Haryana.

Mr. Abhinav Garg, complainant in-person.

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RAJ MOHAN SINGH, J.

The case has been up for hearing through video conferencing.

CM No.1222 of 2021

[1]. Prayer in this application is for placing on record Annexure R-2/1 to Annexure R-2/17.

Notice of this application was issued on 27.01.2021.

For the reasons mentioned in the application, the same is allowed. Accompanying documents are taken on record, subject to all just exceptions.

Main case

[2]. Petitioner has preferred this petition for grant of anticipatory bail under Section 438 Cr.P.C in case bearing FIR No.0273 dated 26.04.2018 registered under Sections 120-B, 406, 420 IPC and Section 3 of the The Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013 (Haryana Act No.32 of 2014) at P.S. Sector 31, Faridabad.

[3]. FIR was registered with the allegations that the complainant deposited an amount of Rs.94.50 lakhs in the fixed deposit scheme floated by M/s SRS Limited from July 2015 to December 2015. Petitioner was the authorized signatory on the fixed deposit receipts. The FIR was registered on the basis of statement of Abhinav Garg-complainant against CMD of SRS Group and other Directors including the petitioner, who was earlier Chief Financial Officer of the Company and thereafter he resigned from the post on 27.01.2017.

[4]. Learned counsel for the petitioner submitted that the petitioner was earlier working as Chief Financial Officer in SRS Group. After his resignation from the Company and after deposit of the amount by the complainant w.e.f. July 2015 to December

2015, the maturity was due in the month of July 2016. The complainant had received the interest till 31.03.2017. The FIR was registered only when payments of interest were stopped, but the petitioner had already resigned prior to stoppage of payments of interest to the complainant. After the resignation of the petitioner from the post of CFO, Sachin Goyal was appointed in his place.

[5]. Learned counsel further submitted that according to the proceedings of the National Company Law Tribunal (for short 'the NCLT') and the affidavit filed by the CMD of the Company before the NCLT, all FDs matured upto 30.09.2016 shall be repaid together with interest. The Company had already made payments to the depositors in the NCLT on 22.08.2017. In addition to the directions passed by the NCLT, the Company also showed willingness to pay the amount along with interest to the depositors as per the list attached (Annexure P-9).

[6]. Learned counsel also referred to the list of depositors wherein the name of the complainant Abhinav Garg was mentioned at Sr. Nos.12 to 14. The principal amount has not been shown, but payments to the tune of Rs.5273/-, Rs.4299/- and Rs.6219 have been shown towards payments of interest. The principal amount has not been paid to the complainant which was in a sum of Rs.94,50,000/-. In the second list of

depositors, name of the complainant finds mention at Sr. Nos.93 to 96 and payments towards interest have also been shown upto 01.09.2017.

[7]. Learned counsel for the petitioner further submitted that the petitioner was inducted as the Chief Financial Officer and was not responsible for the conduct of business and the investments made in the Company and return of money in any manner. He was inducted on 01.05.2010 and resigned from the Company on 27.01.2017. An intimation was given to the Department of Corporate Services, BSE Limited and to the National Stock Exchange of India Limited as required under Regulation 13 of SEBI.

[8]. Learned counsel further submitted that the complainant had received interest till September 2017 from the Company and when the interest was not being paid, the Company had gone in National Company Law Tribunal and the FIR was registered thereafter. The NCLT appointed Insolvency Resolution Professional as an interim measure and the complainant has also lodged his claim before the Insolvency Resolution Professional. The claim of the complainant has already been deliberated.

[9]. Learned counsel also submitted that after passing of order in the present case, the petitioner has satisfied the Court

in other petitions i.e. CRM-M No.3366 of 2021, CRM-M No.3377 of 2021 and CRM-M No.3623 of 2021, wherein interim stay of arrest was granted to the petitioner. On the basis of aforesaid cases, interim order was also passed in CRM-M No.6363 of 2021 and CRM-M No.6551 of 2021.

[10]. On the other hand, learned State counsel duly assisted by the complainant in-person submitted that the petitioner was highly involved in the affairs of the Company on day-to-day basis. He was holding a post of key managerial personnel of the Company and was having pervasive control over the affairs of the Company. The Company was having 11 Subsidiaries of M/s SRS Limited. Being the Chief Financial Officer, the petitioner had full knowledge of inflow and outflow of funds of the Company, balance sheets, debit and credit entries within the Company. The petitioner was Director of 11 Companies of M/s SRS Group from 2008 onwards and even before his joining in the SRS Group in the year 2010. Petitioner is a close relative of CMD/Promoter of the Company. Wife of petitioner is real sister of wife of CMD/Promoter.

[11]. Learned State counsel further submitted that the petitioner was authorized signatory, who had signed original fixed deposit receipts, interest cheques/warrants and refund cheques/warrants given to the complainant. During investigation

it has been found that the fixed deposits and repayment warrants/cheques issued to the investors in lieu of fixed deposits were forged and offence under Sections 467, 468 and 471 IPC have been added. The allegations are that the petitioner had issued fake and forged post dated cheques/warrants to the complainant and other investors during his tenure being authorized signatory of M/s SRS Limited in the year 2016-17 with full knowledge that the same are forged and fabricated and thereafter he resigned from the Company on 27.01.2017. Petitioner was Director in 11 Companies of SRS Group and has been involved in 10 FIRs. In FIR No.231 dated 11.04.2018, the anticipatory bail was got dismissed as withdrawn.

[12]. Learned State counsel also referred to the information submitted by the authorized signatory of AXIS Bank in the context of details of fixed deposit repayment warrant/cheques of Account No.913020017366374 and Fixed Deposit Interest Account No.913020017410879 in the following manner:-

> *"Company declared the dividend and send us artwork of warrant for approval at our end which should be as per CTS guidelines. Once artwork approved then company printed the warrants through RBI approved vendor and share us printed warrants issuance data for further uploading at our end in ATPAR module. Branch*

has process the instrument through ATPAR module and credited the funds of respective beneficiaries if the data available in ATPAR. Further we would like to inform you that instruments mentioned in your notice (S.No.1-39 mentioned in your notice received on 12-02-20 FIR No.273 Dated 26-04-18 Under Section 406-420-120 & sec 3 HPID ACT 2013 PS Sec 31 Faridabad are not uploaded at our end due to issuance file was not furnished by client."

[13]. In addition to the arguments made by learned State counsel, the complainant in-person submitted that the original investment made by him was to the tune of Rs.94,50,000/- (approx.). The principal amount has not been received by him so far. The total claim of the complainant as on date is Rs.1,35,97,000/-. Against the aforesaid amount, the petitioner has only shown the payments of petty amount of interest that too upto September 2017. In the proceedings before the NCLT also the issue was in respect of payment of dues of the investors and the judgment dated 20.12.2017 passed by the NCLT is also in this regard.

[14]. The complainant also referred to para nos.27 and 28 of the aforesaid judgment passed by the NCLT, in which it was observed that the Company had earned huge profits in previous years and projected so in the next few years, the interest of the depositors should have been given priority so as to clear of the

liability. No serious effort was made by the Company to meet out its obligations, after the petition was disposed of with directions on 20.10.2016 as further clarified in the order dated 02.02.2017. The company had come up with different excuses for the delay which was not accepted by the Tribunal. The indulgence was not shown by the Tribunal keeping in view the pathetic state of affairs. The complainant also referred to the para nos.31, 33, 34, 35 and 36 of the aforesaid judgment in the aforesaid context.

[15]. The complainant also referred to the order dated 06.11.2020 passed in CRM-M No.36418 and order dated 26.11.2020 passed in CRM-M No.39289 of 2020 vide which the prayer for anticipatory was got dismissed as withdrawn and thereafter on second attempt it was dismissed on merits in another FIR. Petitioner was also declared as proclaimed person vide order dated 29.10.2019 passed by the Judicial Magistrate Ist Class, Jalandhar in CNR No.PBJL030745602017 CIS No. NACT/7771/2017 titled '*Ashok Kumar Aggarwal vs. S.R.S. Limited etc'*. The NCLT also issued bailable warrants to the petitioner in COCP No.02/Chd/Hry/2018 vide memo dated 20.12.2018.

[16]. Keeping in view the aforesaid factual position on record, I find that it is not a fit case for grant of indulgence of

anticipatory bail to the petitioner. This petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

March 03, 2021
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No