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

CRM-M-43121-2021

Date of decision : 12.10.2021

Anshul Bansal

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Shreenath A. Khemka, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Gurjot Singh Sadhrao, Advocate for the complainant.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.357 dated 08.04.2016 registered under Sections 406, 420, 506, 120-B, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860 at Police Station City Karnal.

Learned counsel for the petitioner has submitted that in the present case, the FIR was registered on 08.04.2016 and in the said FIR, although, the petitioner was also made co-accused alongwith one Ganesh Bindal and Vijender Bansal but primarily the payments, as detailed in page 24 of the paper book, have been made into the account of Ganesh Bindal and not to him. It is further submitted that even in the order dated 26.08.2016 (Annexure P-2) passed by the Additional Sessions Judge, Karnal in the Criminal Revision filed by the State of Haryana, the argument of

Public Prosecutor has been noticed in para 3 of the same to the effect that the said Ganesh Bindal had suffered a disclosure statement wherein he had offered to get effected the recovery of an amount of Rs.1,22,25,000/- from various persons and thus, his police remand of 5 days was sought. Reference has also been made to the order dated 14.10.2016 (Annexure P-3) vide which the said Ganesh Bindal had been granted the concession of regular bail by the Additional Sessions Judge, Karnal. A specific reference has been made to para 4 of the same, wherein the stand of the prosecution to the effect that the petitioner is innocent despite the fact that he was involved in entire transaction for which he was named in the FIR, has also been noticed. It is submitted that the challan in the present case was filed against the said Ganesh Bindal and it is only subsequently that the complainant had moved an application for involving the petitioner in the case. It is submitted that on 29.03.2019 (Annexure P-7), the petitioner was granted interim protection which had been ultimately dismissed by the impugned order dated 15.09.2021 (Annexure P-11) after a period of more than 2 years and 2 months. It has been submitted that the petitioner has joined the investigation.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and Mr. Gurjot Singh Sadhrao, Advocate appears on behalf of the complainant and have submitted that they are fully prepared to argue the matter and assist this Court. It is their submission that in the present case, after the interim protection was granted, there was a settlement dated 24.07.2019 (Annexure P-8) to which

the present petitioner was also the signatory and although, the petitioner has joined the investigation but since the money has not been paid by the petitioner and he has not respected the terms and conditions of the said agreement, thus, it is prayed that the anticipatory bail of the petitioner be dismissed.

In rebuttal, learned counsel for the petitioner has submitted that the present dispute is primarily a civil dispute and the petitioner was found to be innocent even by the prosecution side and there is no new material to show the involvement of the petitioner. He has also relied upon the judgment of the Hon'ble Supreme Court in **Biman Chatterjee Vs. Sanchita Chatterjee and another, CRA-193-2004, decided on 10.02.2004**, to contend that mere non-fulfillment of the terms of the compromise cannot be a ground for cancellation of bail. The relevant portion of the judgment is as under:-

“Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise..... That apart non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of

law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law. Therefore, in our opinion, the High Court has erred in passing the impugned order.”

Learned counsel for the petitioner has submitted that in the abovesaid case, the compromise was admitted whereas in the present case, it was even disputed. It is further submitted that Kerala High Court in **Sreelal Vs. Murali Menon and another, Crl.M.C.-1864-2014 decided on 10.07.2014**, has held that the agreement entered into before the Mediation Centre, would not become final till the time there is a seal of the Court and the Criminal Court is not to rely upon the same. The relevant portion of the said judgment is reproduced hereasunder:-

“12. Then, the question is what is to effect of mediation agreement in a criminal matter. Admittedly, if the matter is referred for mediation, the mediator is not acting neither as Adalath nor as an Arbitrator or Conciliator to resolve the disputes by passing an award either under the provisions of Legal Services Authorities Act or under the provisions of the Arbitration and Conciliaiton Act. Even if, the matter is referred in a civil case for mediation under section 89 of the Code of Civil Procedure, even then, the mediator is not passing any judgment, but he is only facilitating the parties to arrive at the settlement and help them to draw the mediation agreement and after the agreement is signed by the parties, and counter signed by the Advocates, then, it will be forwarded to the Court which referred the matter and that Court will pass a decree on the basis of the agreement applying the principle under Order 23 Rule 3 of Code of Civil Procedure accordingly. Till, the seal of the

court is affixed on the agreement, and a decree is passed on that basis that agreement, it has no legal effect in the eye of law. So, even if a mediation agreement reaches the criminal court, agreeing to settle the issue on certain terms, the criminal court cannot rely on that agreement and pass a civil decree, relegating the parties to get the amount realized by filing execution petition before the Civil Court and it can only on the basis of the evidence either convict or acquit the accused and if the case is compounded, if it is a compoundable offence, then it can record compounding and that compounding will have the effect of an acquittal under section 320(8) of Code of Criminal Procedure.”

This Court has heard the learned counsel for the parties and perused the paper book.

It is not in dispute that the FIR in the present case was registered on 08.04.2016. As per the FIR, the primary accused was Ganesh Bindal as the amount was stated to have been paid to Ganesh Bindal. In fact, even in the order dated 26.08.2016 (Annexure P-2) passed by the Additional Sessions Judge, Karnal in Criminal Revision filed by the State of Haryana, the argument of Public Prosecutor was noted in para 3 to the effect that the said Ganesh Bindal had offered to get effected the recovery of the total amount of Rs.1,22,25,000/- from various persons and thus, his police remand of 5 days had been sought. It is further clear that in the present case, the petitioner was initially found innocent by the prosecution side itself as is apparent from reading of para 4 of order dated 14.10.2016 (Annexure P-3). The challan in the present case has already been filed against Ganesh Bindal. Apparently, subsequently an application had been moved by the complainant on the basis of which the petitioner was again sought to be

roped in. The present case is based on the documents and the petitioner was even granted the interim protection vide order dated 29.03.2019 (Annexure P-7) which continued for a period more than 2 years and 2 months and the petitioner had joined the investigation and never misused the said concession and thus, based upon opposition to grant anticipatory bail solely on the ground that there was a settlement which had taken place which has not been honoured by the petitioner, the petitioner cannot be non-suited in the present case. It will always be open to the party to seek implementation of the settlement, if any, in accordance with law in civil proceedings. The said agreement, as per the law cited by the learned counsel for the petitioner, till the time is not affirmed by the Court, cannot be made the sole basis for rejecting the bail application of the petitioner.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is granted the concession of anticipatory bail subject to the conditions envisaged under Section 438(2) of Cr.P.C. However, the petitioner shall join the investigation as and when called upon to do so.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

12.10.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**