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

CRM-M No.42067 of 2020
Date of Decision: 01.03.2021

MAJOR SANJEEV BHATIA ......Petitioner
Vs
UNION TERRITORY OF CHANDIGARH .....Respondent

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

Present:Mr. R.S. Rai, Sr. Advocate with
Mr. Anurag Arora, Advocate
for the petitioner.

Mr. Ashu Mohan Punchhi, PP UT, Chandigarh with
Mr. Anupam Bansal, Advocate
for the respondent/UT Chandigarh.

Mr. Raghav Gulati, Advocate
for the complainant.

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RAJ MOHAN SINGH, J.

[1]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.99 dated 27.10.2020, registered under Sections 420/468/471/120-B IPC at Police Station North, Chandigarh.

[2]. The FIR was registered at the instance of complainant-Mrs. Adarsh Manocha w/o Sh. Jasbir S. Manocha with the allegations that the petitioner and Anup Nargas approached her and her husband. They asked them to invest in the Company namely YAR GUN ENTERPRISES PRIVATE LIMITED (YEPL) which is a logistic company dealing with the storage of frozen

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meat for the supply to Army Command Stations. The accused also told the complainant that other firm namely MEDIAIDS provides for cold rooms to YEPL. The accused allured the complainant and her husband by projecting that they would receive 12% return on the investment on monthly basis. The complainant was also given promise that she would be made one of the Directors in the said Company. The accused also increased the rate of shares of YEPL from Rs.10 per share to Rs.55 per share as per projection report i.e. Valuation certificate dated 21.02.2017 allegedly issued by Kamini Sehgal, CA. On the basis of aforesaid assurance, a written Memorandum of Understanding (MOU) was executed on 21.05.2017 between the accused, complainant and other investors. The complainant invested a sum of Rs.50 lakhs in YEPL.

[3]. Precise allegations against the accused are that they have embezzled an amount of Rs.344.57 lakhs and on the basis of forged valuation certificate allegedly issued by Kamini Sehgal, CA on 21.02.2017, the accused increased the price of share of the Company from Rs.10 to Rs.55 thereby alluring all the new investors to invest their money on the assurance that they would get more benefits. The MOU was executed on the basis of such assurance that the complainant was to be given a post as per clause 9 of the said MOU, but she was not given the said

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position, neither she was made Director in the Company, nor was paid money as per promise. The investors have not been paid anything till date and the accused persons have cheated the complainant and the investors in a huge sum f Rs.344.57 lakhs. The money has been transferred from the accounts of the Company.

[4]. Learned Senior counsel for the petitioner vehemently submitted that it is a case of civil profile and the FIR has been registered just as a recovery proceedings. Learned Senior counsel further submitted that the petitioner is in custody since 21.10.2020. Challan has been presented on 26.12.2020. No recovery is to be effected from the petitioner. Petitioner being aggrieved against mismanagement in the Company filed C.A. Nos.188/2020 and 189/2020 & 263/2020 and C.P. No.60/Chd/CHD/2020 in the National Company Law Tribunal, Chandigarh Bench, Chandigarh after resigning from the Company on 30.12.2019. Petitioner is no longer a shoreholder. No written statement has been filed by the respondent/complainant in that petition. The National Company Law Tribunal passed an order dated 22.09.2020 that there shall not be any change in the shareholding pattern of the company and no assets of the company shall be sold or otherwise utilized other than in the normal course of business when both the

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counsel submitted that they will try to reach out an amicable settlement between the parties.

[5]. Learned Senior counsel for the petitioner further submitted that even after making the said statement before the National Company Law Tribunal, the FIR was got registered on 27.10.2020. Petitioner is only an Ex. Director. As per minutes of meeting held on 06.08.2020, point regarding dispute of dues of Mediaids, a proprietorship Firm of the petitioner was discussed and after due deliberations, it was observed in clause (a) as under:-

> *"(a) Bharat Rajeev & Associates has shared its audit report to the EOW without tabling to the board of directors. A resolution in this regard may be passed and a letter to go from Yar Gun Enterprises Pvt. Ltd., to EOW that the audit report does not have the concurrence of Board of Directors as yet the company has ordered an internal audit. Once the internal audit is over, action as deemed appropriate will be taken. The report has now been tabled."*

[6]. Learned Senior counsel for the petitioner submitted that despite the aforesaid observation, challan was presented. Petitioner was not paid anything and, therefore, petitioner himself alleged mismanagement in the Company before the National Company Law Tribunal. Petitioner has already disassociated himself from the directorship w.e.f. 30.12.2019. Husband of the complainant was inducted as Director in the

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Company vide resolution of the Company dated 17.10.2019. As per resolution dated 22.10.2019, financial powers stood vested with the Directors including the husband of the complainant, who was signatory in the Bank accounts. The valuation report was obtained through the services of Company Secretary and his professional fee was also paid. Litigation is pending before the National Company Law Tribunal.

[7]. Learned Senior counsel for petitioner further submitted that registration of FIR is abuse of process of law as the same cannot be resorted to in order to effect recovery of dues, if any. Learned Senior counsel further submitted that signature of Kamini Sehgal, CA if compared from documents viz. her statement dated 28.09.2020 made before the Inquiry Officer (EOW), Sector 17, Chandigarh, Independent Auditors' Report dated 10.09.2016 and Valuation Certificate, then these documents would provide the same pattern of signatures. The MOU is based on certain documents. The valuation of the Company share was assessed by the Chartered Accountant and the same was accepted after due discussion at Rs.55 per share i.e. Rs.10 per share having a premium of Rs.45 per share. The statement of Kamini Sehgal, CA was recorded only on 28.09.2020 whereas MOU had already been executed on 21.05.2017. The Chartered Accountant was duly paid by the

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Company for the valuation done. Professional fee for valuation report was duly paid by the Company itself through Company Secretary Virender Sharma. The valuation certificate was also published on the website of Ministry of Corporate Affairs on 07.07.2017 by the said Company Secretary Virender Sharma. No complaint was made by the author of share valuation certificate i.e. Kamini Sehgal, CA before any authority in respect of misuse of her stamp or seal or any forgery committed on the document in question. The valuation certificate is also proved from other documents such as auditors' report which was signed by Kamini Sehgal, CA and was also issued in her name for other Companies unrelated to the accused party. Those documents are available on the portal of Ministry of Corporate Affairs.

[8]. Learned Senior counsel for the petitioner further submitted that the valuation report itself is based on many documents and is a culmination of analysis of all other financial documents such as Balance Sheets, Assets and Liabilities, Profit and Sales Account, Sales projection etc. which ultimately resulted in share price valuation. In the absence of any suspicion with regard to other financial documents, no such allegation of forgery in respect of valuation certificate can be presumed. Husband of the complainant was added a new Director in the Board of Company at the instance of the

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complainant herself. Some other complaints have also been filed against the accused by other shareholders namely Ms. Navnika Puri w/o Brigadier Gian Puri and Mrs. Supreeti Binda w/o Colonel P.S. Bindra after registration of present FIR. Those complainants are also respondents in the petition before National Company Law Tribunbal. Husband of Ms. Navnkia Puri and Mrs. Supreeti Bindra are the Directors in the Company against whom NCLT petition has been filed. Ms. Navnika Puri was also re-appointed as Director on the Board of the Company after her initial resignation on 13.12.2017. Husband of the complainant unilaterally conducted an audit of the accounts of the Company, contrary to the provisions of the Companies Act. For that the husband of the complainant engaged the services of M/s Bharat Rajeev & Associates for conducting this audit despite there being another internal auditor of the Company. That is why, it was resolved and recorded in the minutes of meeting dated 06.08.2020 that the auditor report shared with the EOW does not have the concurrence of the Board of Directors and the Company has ordered an internal audit.

[9]. Learned Senior counsel for the petitioner with reference to the order dated 27.10.2020 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh submitted that when the matter was taken up before the Company Law

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Tribunal, learned counsel appearing for both the parties jointly submitted that there is some progress in the conciliation proceedings between the parties and they sought more time for settlement. Despite the aforesaid order dated 27.10.2020, the FIR was registered on 27.10.2020 itself which is colourable exercise of power.

[10]. Per contra, learned Public Prosecutor for UT, Chandigarh duly assisted by learned counsel for the complainant submitted that magnitude of the embezzlement is to the tune of Rs.344.57 lakhs. Offence under Sections 467 and 201 IPC have been added as the Company Secretary has destroyed the record. He further submitted that petition bearing CRM-M No.39464 of 2020 for anticipatory bail filed by the co-accused Anup Nargas was dismissed by this Court on 22.12.2020 and he remained unsuccessful in SLP (Crl.) No.6829/2020, which was dismissed by the Hon'ble Apex Court on 30.12.2020. He was given two weeks' time to surrender and apply for regular bail.

[11]. Learned Public Prosecutor on behalf of the respondent/UT, Chandigarh further submitted that it is yet to be ascertained as to how the money was transferred from the accounts of the company in other accounts. In the MOU, 13 persons have shown to have participated whereas the persons

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appearing at Sr. Nos.3, 4 and 8 i.e. Smt. Bharti Chaturvedi, Smt. Supreeti Binda and Shri Geet Bindra respectively have not signed the aforesaid MOU in any capacity. The aforesaid persons are also shown to be promoters of the Company. The parties at Sr. Nos.4 to 13 are shown to have agreed to bring fresh investors and these parties shall be allocated shares in the manner as depicted in para no.3 of the MOU. New investors had invested Rs.39,314,000.00. However, no investor has received any amount so far. Despite para No.12 of the MOU, the accused were involved in acting illegally.

[12]. Learned Public Prosecutor on behalf of the respondent/UT, Chandigarh further referred to the decision to induct Adarsh Manocha to be Head, HR & IT and the remuneration for active participation in the operation of business is Rs.50,000/-. The amount invested is shown to be Rs.50 lakhs and return at the rate of 1% of the invested amount is Rs.50,000/- per month. The return @ 12% on total investment from the date of investment was decided to be paid on monthly basis. It was decided to be paid from July 2017 onwards subject to availability of funds and payments of arrears from the date of investment till June 2017 were to be paid after October 2017 on monthly basis. The mode of payment of such return was to be decided mutually by the shareholders. This was not permitted in

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the eyes of law and should not have been put on record. It was so observed in para No.12 of the MOU. There was no resolution of the Company for Chartered Accountant for the investment etc.

[13]. Learned Public Prosecutor on behalf of the respondent/UT Chandigarh further submitted that Kamini Sehgal has denied her signature on valuation certificate by way of making her statement before the Inquiry Officer, EOW, Sector 17, Chandigarh on 28.09.2020. She further stated that the Company namely Yar Gun Enterprises Pvt. Ltd. is not known to her and she has never worked for this Company. The letter head (on the basis of which valuation certificate has been issued) does not belong to her. Even the format used in the certificate has not been used by her at any point of time for issuing certificates to her clients. She has pleaded the said certificate to be forged. FRN Number mentioned in the certificate is also wrong as her FRN Number is 024169N and not 022860N. She has also denied her signature on the valuation certificate. She further stated that as per Rule 13, Explanation of Companies Act, 2013, the certificates are to be issued by an independent merchant Banker, who is registered with the Securities and Exchange Board of India or an independent Chartered Accountant in practice having minimum experience of 10 years.

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With reference to the aforesaid, Kamini Sehgal, CA stated that she was not competent to issue such valuation certificate.

[14]. Learned Public Prosecutor on behalf of the respondent/UT Chandigarh further submitted that the financial health of the Company was not such for which projection in question was made i.e. from Rs.10 per share to Rs.55 per share. He referred to the document of Ministry of Corporate Affairs Receipt G.A.R. 7 to show that the financial health of the Company for the period in question in the context of profit before tax and profit after tax. The Company Secretary is also accused in respect of destruction of documents for which offences under Sections 467 and 201 IPC have been added. Uploaded/scanned documents of original is available to show the forgery in question.

[15]. Both the parties have tried to address arguments with reference to the documents in question, but at this stage any consideration of documents on merits, may prejudice the case of the parties during trial. Petitioner is in custody since 28.10.2020. Challan has been presented. Petition before the National Company Law Tribunal, Chandigarh Bench, Chandigarh is pending. Vide orders dated 22.09.2020 and 27.10.2020 passed by the Company Law Tribunal the observation was made that the parties to the litigation would try

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to strike out some amicable resolution of the dispute. Evidently, the allegations are based on documentary evidence. The Police after investigation has already filed the challan. The admissibility of documents and veracity of allegations would be decided by the trial Court during trial. Offences are triable by the Magistrate. In view of ratio of ***Sanjay Chandra and Vinod Goenka vs Central Bureau of Investigation, 2011(4) RCR (Criminal) 898; Babba vs State of Maharashtra, (2005) 11 SCC 569*** and ***Siddharam Satlingappa Mhetre vs State of Maharashtra, 2011(1) RCR (Criminal) 126***, even in case of economic offences of high magnitude, regular bail can be granted after filing of challan.

[16]. Keeping in view of the aforesaid stage of the case and without adverting to the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

[17]. In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

[18]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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