IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-42110-2020
Date of decision: 09.04.2021

VIPIN KUMAR DUA .....Petitioner

Versus

THE UNION TERRITORY OF CHANDIGARH THROUGH PUBLIC PROSECUTOR .....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by : Mr. Sunil Fernandes, Advocate;
Mr. Karan Nagrath, Advocate;
Mr. Viraj Gandhi, Advocate;
Mr. Adarsh Dubey, Advocate and
Mr. Darpan Wadhwa, Advocate
for the petitioner.

Mr. Ashu Mohan Punchhi, Public Prosecutor with
Mr. Anupam Bansal, Addl. Public Prosecutor
for U.T., Chandigarh.

Mr. Rajesh Garg, Sr. Advocate with
Mr. Arun Sharma, Advocate
for the complainant.

(Order pronounced through video conferencing)

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ARUN KUMAR TYAGI, J.

1. The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No. 70 dated 29.07.2020 registered under Sections 408, 420 and 120 B of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station North, Chandigarh to which Sections 467, 468 and 471 of the IPC were added later on.

2. Sh. Sushil Singla, Managing Director of M/s Supreme Securities Limited submitted written complaint to the Senior

Superintendent of Police, Chandigarh against Vipin Kumar Dua, Regional Manager (the petitioner); Ankur Moudgill, Assistant Manager; Priya Sharma, Senior Executive and Sukhchain Singh, Field Executive - employees of M/s Supreme securities Limited working in its Sector 8-C Branch. In the complaint, it has been inter-alia alleged that all the above said four accused persons were responsible for the day to day business of the branch and to maintain the accounts books in due course of the business. Accused Nos. 1 to 4 have misappropriated and embezzled amount of, at least, Rs. 4,91,61,424/- which amount was in their possession as property of the Company as its employees/agents. The breakup of the amount of Rs. 4,91,61,424/- is (i) Rs. 91,97,400/- as foreign currency given to Ashu Forex + (ii) Rs. 13,71,750/- outstanding in the books of Ashu Forex + (iii) Rs. 20,43,880/- as foreign currency given to Jupiter Forex (net amount receivable as per books of accounts of the company from Jupiter Forex being Rs 20,41,700/-) + (iv) Rs. 80,30,692/- withdrawn from ICICI Bank Account + (v) Rs 2,78,07,425/- equivalent foreign currencies + (vi) Rs. 6,96,616/- available as cash in the Branch + (vii) Rs. 15,841/- withdrawn from Kotak Mahindra Bank. The complainant accordingly requested for registration of FIR against them under the appropriate penal provisions of law and recovery of the embezzled/misappropriated amount. The police investigated the case and arrested the petitioner on 14.09.2020 and on completion of investigation filed charge-sheet against him.

3. The petitioner being in custody has filed the present petition for grant of regular bail.

4. The petition has been opposed by the respondent U.T. Chandigarh in terms of status report by way of affidavit of Sukhraj Katewa, DSP-EOW, Chandigarh and also by the complainant but no reply to the petition has been filed by the complainant.

5. I have learned arguments addressed by learned Counsel for the petitioner, learned Public Prosecutor and Additional Public Prosecutor for U.T. Chandigarh and learned Senior Counsel for the complainant and gone through the relevant record.

6. Learned Counsel for the petitioner have argued that the petitioner made complaints dated 21.05.2020 and 22.05.2020 to the Reserve Bank of India and the Enforcement Directorate respectively highlighting the various illegalities and violations of the foreign exchange regulations and anti money laundering guidelines being committed by M/s Supreme securities Limited. The petitioner has been implicated in false criminal case by lodging the present FIR due to sheer malice and enmity towards him and to punish and penalize him for being a whistle blower protesting against flagrant and deliberate violation of laws by his employers for the sake of earning profits. The petitioner had resigned on 28.04.2020 and his employment was terminated on 15.07.2020. Accusations of embezzlement of huge sums of money have been levelled against the petitioner without any documentary proof what so ever. The bank accounts as well as all cash transactions were managed and controlled by the head office. The credentials/passwords of the bank accounts were available with the head office of the Bank. Duplicate set of the safe vault keys for the

Chandigarh Branch was available with the Managing Director. Three CCTV Cameras were installed in the premises of the Branch. The Auditors appointed by the head office periodically conducted audits. Discrepancies of such magnitude as alleged in the FIR, in the physical stock of currencies as well as the amounts in the bank accounts, would not have missed the Company's attention which by itself makes the case of the prosecution doubtful. The petitioner had sent e-mails disclosing the amounts due to and against M/s Supreme Securities Limited and there was no concealment regarding the same on his part. The allegations regarding preparation of forged bogus statements and receipts in connivance with other accused are wrong. The petitioner joined investigation as and when called and fully co-operated in the same. The petitioner is alleged to be involved in forgery of stamps which were alleged to have been recovered from his house but no such recovery of stamps was made in search of his house conducted first time and recovery was subsequently made on search conducted second time from the garage of the petitioner's house, which was unlocked and easily accessible to others. The petitioner was illegally arrested in breach of the statutory provisions of Section 41 A (3) of the Code of Criminal Procedure, 1973 and law laid down in **Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273**. The petitioner was subjected to custodial interrogation and no recovery of foreign currency was made from him. There is no substantive evidence in proof of embezzlement of the amounts by the petitioner. There are no reasonable ground to believe that the petitioner has committed any the alleged offences. No prima facie case is made out against the petitioner regarding commission of alleged offences. The evidence in entirety is in electronic form and cannot be tampered with. On completion of investigation qua the petitioner challan has been filed but no effective proceedings have taken place despite expiry of more than seven months. It is settled law that bail is the rule and jail an exception. The petitioner has deep roots in the society and is the sole bread earner for his family comprising his mother, wife and minor son aged about 13 years. His elderly and ailing mother, who is 75 years old and lives with him, requires due care and medical attention. The petitioner is also suffering from various ailments including hypertension and renal stone. There is no likelihood of of the petitioner absconding during trial. The trial is likely to take long time and no useful purpose will be served for further detention of the petitioner in custody. Therefore, the petitioner may be granted regular bail during the pendency of the trial.

7. In support of his arguments learned Counsel for the petitioner has placed reliance on judgments in ***Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 (Supreme Court); Sanjay Chandra Vs. CBI (2012) 1 SCC 40 (Supreme Court); Criminal Appeal No. 113 of 1960 titled Naini Gopal Lahiri and others Vs. State of Uttar Pradesh (Supreme Court) decided on 08.05.1964; Hardiya Ranjan Vs. State of Bihar (2000) 4 SCC 168 (Supreme Court); Criminal Appeal No. 227 of 2018 (arising out of SLP (Criminal) No. 151 of 2018 titled Dataram Singh Vs. State of Uttar Pradesh and others*** **decided on 06.02.2018** ***(Supreme Court) and Bail Application No. 945 of 2020***

titled as Firoz Khan Vs. State (NCT of Delhi) decided on 29.05.2020 by Delhi High Court.

8. On the other hand, learned Public Prosecutor and Additional Public Prosecutor and learned Senior Counsel for the complainant have submitted that officials of M/s Supreme Securities Limited on instructions of Audit Department visited the branch office on 04.05.2020 which was locked and on telephonic information called the petitioner who told them that keys of the locker were with co-accused Priya Sharma and Sukhchain Singh who refused to come on which the petitioner gave system generated foreign currency and cash sheet signed by him. On 29.05.2020, the locker was opened in the presence of the petitioner and huge discrepancy was observed in stock as per written statement given by the petitioner and actual stock as per physical verification. Further discrepancy was also observed in forged and actual bank statements of ICICI Bank and Kotak Mahindra Bank. On an earlier occasion co-accused Ankur Moudgill was caught with foreign currency by officials of Enforcement Directorate at the shop of M/s Budhiraja, Sector - 22, Chandigarh on 06.12.2017. The petitioner, co-accused Ankur Moudgill and Priya Sharma followed the case without any intimation to the Head Office. The petitioner, in connivance with co-accused Priya Sharma, Ankur Moudgill and others cheated M/s Supreme Securities Limited by forging the statements of bank accounts, making bogus entries in the ledger of the company and forged the signatures of sellers on purchase invoices/receipts. On search 22 stamps of various offices pertaining to money changers were

recovered from house of the petitioner. The concerned money changers denied having issued any kind of stamps to officials of M/s Supreme Securities Limited or anybody else and the said stamps were made for preparing of false sale invoices. The petitioner and his co-accused also forged the signatures on purchase invoices and receipts as mentioned in the status report. The petitioner allegedly handed over a parcel on 21.03.2020 to Patiala Branch allegedly containing foreign currency worth Rs. 91,97,400/- but the petitioner did not visit Patiala Branch and even the concerned Branch Manager was not found to be at Patiala on the alleged date and time and on opening the parcel was found not to contain any currency. There is cogent evidence to prima facie show involvement of the petitioner in commission of the alleged offences. No explanation has been offered by the petitioner for the shortages of foreign currency and also regarding disposal thereof. The petitioner has committed serious economic offences which also affect the economy and constitute class apart and have to be viewed seriously. In view of the nature of accusation and gravity of the offences, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

9. Now, it is well settled that the object of detention during investigation and trial is not punishment but to secure presence of the accused during investigation and trial. Bail is the rule and committal to jail is an exception as held in ***Gurbaksh Singh Sibbia and others v. State of Punjab : 1980(2) SCC 565***. Accused is presumed to be innocent till proved to be guilty. Detention in custody may be a cause of

great hardship to the accused as he may, besides being subjected to the psychological and physical deprivations of jail life, lose his job, be prevented from contributing to the preparation of his defence and burden of his detention may fall heavily on the innocent numbers of his family as held by Hon'ble Supreme Court in ***Moti Ram v. State of M.P. : (1978)4 SCC 47***.

10. While considering the question of grant of bail, the Court has to keep in mind (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of tampering with evidence and intimidating witnesses and (viii) danger of course of justice being thwarted by grant of bail. (See ***State of U.P. v. Amarmani Tripathi, (2005)8 SCC 21***; ***Sanjay Chandra v. CBI : 2012(1) SCC 40*** and ***Bhadresh Bipinbhai Sheth v. State of Gujarat and another : 2016(1) SCC 152***).

11. However, socio-economic offences have deep rooted conspiracies affecting the moral fibre of society and causing irreparable harm and the same have to be viewed seriously. Reference in this regard may be made to ***State of Bihar and another Vs. Amit Kumar @ Bachaha Rai : 2017 (13) SCC 751 and Rohit Tandon Vs. Directorate of Enforcement : 2018(11) SCC 46***.

12. ***In Criminal Appeal No. 320 of 2021 (Arising out of SLP***

(Criminal) No. 2545 of 2020 titled Naveen Singh Vs. State of Uttar Pradesh and another decided on 15.03.2021 Hon'ble Supreme Court has held that seriousness of the offence is one of the relevant considerations while considering the grant of bail and in that case bail was declined in offences triable by Judicial Magistrate First Class in view of seriousness of the offences.

13. The questions as to the facts of the case satisfying the essential ingredients and constituting the alleged offences and as to commission of the alleged offences by the petitioner and his co-accused and their guilt or innocence have to be determined on the basis of evidence to be produced during trial and cannot be determined/adjudged at this stage by this Court.

14. In view of the observations made by Hon'ble Supreme Court in ***State of Bihar and another Vs. Amit Kumar @ Bachaha Rai : 2017 (13) SCC 751; Rohit Tandon Vs. Directorate of Enforcement : 2018(11) SCC 46 and Criminal Appeal No. 320 of 2021 (Arising out of SLP (Criminal) No. 2545 of 2020) titled Naveen Singh Vs. The State of Uttar Pradesh and Another decided on 15.03.2021*** and the facts and circumstances of the case, nature of accusation and prima facie evidence against the petitioner showing his involvement in commission of the alleged offences, serious nature of the offences involving fraudulent transactions regarding exchange of foreign currency affecting the national economy as well besides the complainant, the quantum of sentence which conviction may entail, likelihood of the petitioner absconding, intimidating the witnesses

and/or tampering with evidence, danger of course of justice being thwarted by grant of bail and also the fact that the trial can be ordered to be expedited by issuing appropriate directions for expeditious conclusion thereof, but without in any manner expressing any opinion on merits of the case as the same may seriously prejudice either of the parties, I am of the considered view that the petitioner does not deserve grant of regular bail.

15. In view of the above, observations in ***Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 (Supreme Court); Sanjay Chandra Vs. CBI (2012) 1 SCC 40 (Supreme Court); Criminal Appeal No. 113 of 1960 titled Naini Gopal Lahiri and others Vs. State of Uttar Pradesh (Supreme Court) decided on 08.05.1964; Hardiya Ranjan Vs. State of Bihar (2000) 4 SCC 168 (Supreme Court); Criminal Appeal No. 227 of 2018 (arising out of SLP (Criminal) No. 151 of 2018 titled Dataram Singh Vs. State of Uttar Pradesh and others*** **decided on 06.02.2018** ***(Supreme Court)*** and ***Bail Application No. 945 of 2020 titled as Firoz Khan Vs. State (NCT of Delhi) decided on 29.05.2020 by Delhi High Court*** are not of any help to the petitioner so far as the question of grant of regular bail to him is concerned.

16. Accordingly, the present petition for grant of regular bail to the petitioner is dismissed.

17. However, in view of the observations made by Hon'ble Supreme Court in ***Doongar Singh Vs. State of Rajasthan 2018 (1) RCR Criminal 256; State of U.P. Vs. Shambhu Nath Singh and others, 2001 (2) R.C.R. (Criminal) 390; Hussain and another Vs.***

Union of India 2017(2) RCR Criminal 312 and ***Thana Singh Vs. Central Bureau of Narcotics 2013(1) R.C.R(Criminal) 861***, the trial Court is directed to expedite the trial and conclude prosecution evidence preferably within a period of four months, subject to easing out of restrictions imposed to prevent spread of infection of Covid-19 and instructions regarding physical hearing/consent to virtual hearing, by conducting trial on day to day basis by allocating block of dates for the trial as directed by Hon'ble Supreme Court and by issuing coercive process for securing presence of the prosecution witnesses if so required.

18. In case of non-appearance of prosecution witnesses, the trial Court shall take appropriate action against the concerned prosecution witnesses absenting without any lawful excuse by filing complaint under Section 174 of the Indian Penal Code, 1860 or taking proceedings under Section 350 of the Cr.P.C. against them.

19. The observations made by this Court are strictly for the purpose of disposal of the present petition and nothing in this order shall be treated as expression of any opinion on merits of the case so as to bind or influence the trial Court in adjudication of question of guilt or innocence of the petitioner.

20. A copy of this order be sent to the trial Court concerned for requisite compliance.

09.04.2021 **(ARUN KUMAR TYAGI)**
kavneet singh **JUDGE**

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