IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.M-43388 of 2020
Date of decision: 07th January, 2021.

AAKASH CHATURBHUJ CHHABARIA

...Petitioner

Versus

STATE OF HARYANA

...Respondent

(***Heard through Video-Conferencing)***

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Mahesh Jethmalani, Senior Advocate with
Mr. Hemant Bassi, Mr. Ravi Sharma and
Mr. Vaneet Soni, Advocates for the petitioner.

Mr. Gurmeet Singh, Assistant Advocate General, Haryana
for the respondent-State.

Mr. R.S. Rai, Senior Advocate with Ms. Shaurya K. Sharma,
Mr. Abhinav Sood and Mr. Rahul Dhawan, Advocates
for the complainant.

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<u>MEENAKSHI I. MEHTA, J.</u>

The petitioner seeks the relief of anticipatory bail in the criminal case arising out of FIR No.0179 registered at Police Station Cyber Crime, District Gurugram, on 22.10.2020 under Sections 406, 420, 467, 468, 471, 120-B of IPC and Section 66D of the Information Technology (Amendment) Act, 2008 wherein Section 408 IPC is stated to have been added subsequently during the investigation.

2. Shorn and short of unnecessary details, the allegations as levelled in the afore-mentioned FIR, are that the complainant-Company,

'HPE', is a private limited Company and it is a wholly owned subsidiary of Hewlett Packard Enterprise US which deals in information technology as well as the information technology enabled services. To promote its business, the complainant has developed a system for appreciating its partners, distributors and re-sellers by providing incentives to them by way of short-term incentive program. Its Tactical Sales Goal Achievement Program provides rebates to its said partners etc. and is known as Tactical SGA (M69T) Cash Program and to avail this concession, all the eligible partners, distributors and re-sellers are required to adhere to the prescribed terms and conditions. Nitin Sharma, a co-accused of the present petitioner, was employed with the complainant and he was promoted as Process Capabilities Manager vide letter dated 15.06.2015 and he was also holding the post of Business Planning Manager and was entrusted with the most essential and confidential documents/information of the complainant which involved the disbursal of the rebate amounts to the above-said eligible partners, distributors and re-sellers. During an internal review of the budget allocated for the said M69T Program, the Business Financial Team of the complainant-company noticed that the rebate amount to the tune of Rs.19,81,42,530/- had been illegally approved and overdrawn on the basis of the e-mails forged and created by accused Nitin Sharma and had been paid to the non-eligible resellers namely Atlantis and JT Solutions. Accused named Ms. Reena S, another employee of the complainant, who was entrusted the work of processing and validating the payments of the rebate amount to the said eligible partners etc, had made the said payment by transferring the amounts of Rs.15,40,98,000/- and Rs.4,40,44,530/- in the respective bank accounts of JT Solutions and Atlantis under the garb of the said Program despite the fact that they were not entitled/eligible for the same. The present petitioner is the owner/CEO of the afore-said firm Atlantis and all the accused have duped and have, thereby, caused wrongful loss to the complainant, for their personal gains.

3. I have heard learned Senior counsel for the petitioner Mr. Mahesh Jethamalani as well as learned State counsel along-with Mr. R.S.Rai, learned Senior counsel for the complainant in the present petition and have also perused the file thoroughly.

4. Learned Senior counsel for the petitioner has contended that in fact, the petitioner had secured several work orders for the complainant-company from Indian Railways and for this purpose, he had spent huge amount of money by engaging employees, travelling etc. and the complainant-company owed a sum of more than Rs.9 crore to the petitioner on this count but had released a sum of Rs.4.34 crore only to him (petitioner) in three instalments and a sum of Rs.5 crore approximately is still outstanding against the complainant and the petitioner has already filed a civil suit seeking the recovery of the said amount from the complainant and thus, the said dispute between the parties is purely of civil nature but the petitioner has been falsely implicated in the present criminal case and therefore, he deserves the relief of anticipatory bail.

5. However, learned State counsel as well as learned Senior counsel for the complainant have argued that the complainant-company did not owe any amount to the petitioner for procuring any work orders for it as claimed by him and rather, the petitioner as well as the owner of JT

Solutions conspired with both the above-named employees, i.e accused Nitin Sharma and Ms. Reena S, of the complainant who siphoned the above-said amount from the accounts of the complainant and paid the same to them by transferring it in their respective bank accounts. They have also argued that accused Nitin Sharma has already made a confessional statement regarding the complicity of the petitioner in the present crime and therefore, the petitioner needs to be interrogated on several points to get the true facts elucidated in this case. They have, further, pointed out that an amount of around Rs.37,00,000/- has been transferred by the petitioner subsequently in the bank accounts of the Chartered Accountant of accused Nitin Sharma and his parents and have argued that this fact clearly shows the existence of the element of criminal conspiracy between all the accused to swindle the huge amounts of the complainant's money and in these circumstances, the present petition deserves dismissal.

6. Annexure **P-2** is the Partner Agreement as shown to have been executed between the complainant-company and the petitioner which was agreed to become effective w.e.f. 11.06.2013 and as mentioned therein, the petitioner was appointed as an authorized and non-exclusive partner for the purchase and resale, through distribution, of the products of the complainant-company. It goes undisputed between the parties that a sum of Rs.4,40,44,530/- had been transferred from the account of the complainant-company to the bank account of the petitioner. Though the petitioner claims that this amount was so transferred in his bank account towards the part payment of the expenses incurred by him in procuring work orders for the complainant from the different Divisions of Indian Railways but at this

stage, he has not been able to refer to any stipulation/term and condition of the said Partner Agreement providing for the payment of any amount to him on the said score.

7. Further, the mere factum of the filing of the afore-said civil suit (the copy of the plaint of the same has been annexed with the present petition as **P-19**) by the petitioner does not come to his aid for seeking the relief of anticipatory bail because Annexure **P-19** (at page No.160 of the paper-book) bears the date 11.12.2020 meaning thereby that this civil suit has been filed after the registration of the FIR in this case on 22.10.2020 and moreover, at this stage, the petitioner has not advanced any cogent and candid explanation for keeping mum over the matter for such a long period till the registration of the said FIR.

8. Further, as observed by the Court below in its order dated 17.11.2020 regarding the dismissal of the application as preferred by the petitioner for seeking the same relief, the afore-named co-accused of the petitioner, i.e Nitin Sharma, was arrested on 23.10.2020 and he had made a confessional statement and after the transfer of the above-said amount in his bank account, the petitioner had transferred a sum of Rs.36,72,000/- in the bank accounts of the Chartered Accountant of said Nitin Sharma and his parents which has been utilized by the said Chartered Accountant to pay the due GST for Nitin Sharma and his Companies and an amount of Rs.4 crore approximately is yet to be recovered from the petitioner and the details of the accounts of his Company, i.e M/s Atlantis Enterprises Private Limited as well as his other accounts are yet to be enquired into during the investigation. The factum of the transfer of the above-said amount in the

bank accounts of the Chartered Accountant of his said co-accused and his parents also remains unexplained at this stage. To add to it, the Court below has also specifically observed that the address of the petitioner, as mentioned in the application moved before it as well as in his Aadhar Card, had been found to be fake during the investigation. In view of all the above-discussed facts and circumstances, this Court is of the considered opinion that the possibility of the requirement of custodial interrogation of the petitioner during the investigation of the present case, cannot be ruled out.

9. As a sequel to the fore-going discussion, it follows that this petition deserves dismissal. Accordingly, the same stands dismissed.

07th January, 2021. **(MEENAKSHI I. MEHTA)**
seema **JUDGE**

Whether speaking/reasoned?	*Yes/No*
Whether Reportable?	*Yes/No*