IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRM-M-100 of 2021 (O&M)**

Sanjay Chawla ...Petitioner

Versus

State of Haryana ...Respondent

2. **CRM-M-138 of 2021(O&M)**

Rahul Chandna ...Petitioner

Versus

State of Haryana ...Respondent

3. **CRM-M-37627 of 2020 (O&M)**

Dinesh Mahajan ...Petitioner

Versus

State of Haryana ...Respondent

4. **CRM-M-37883 of 2020 (O&M)**

Khushal Jain ...Petitioner

Versus

State of Haryana ...Respondent

5. **CRM-M-39209 of 2020 (O&M)**

Anuj Gureja ...Petitioner

Versus

State of Haryana ...Respondent

6. **CRM-M-39230 of 2020 (O&M)**

Neeraj Bhatia ...Petitioner

Versus

State of Haryana ...Respondent

7. **CRM-M-39233 of 2020 (O&M)**

Gaurav Sehgal ...Petitioner

Versus

State of Haryana ...Respondent

And

8. CRM-M-40278 of 2020 (O&M)

Kamal Jain

...Petitioner

Versus

State of Haryana

...Respondent

Date of Decision: March 16, 2021

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate and
Mr. J.S. Pannu, Advocate for the petitioner
in CRM-M-39209-2020, CRM-M-39230-2020
CRM-M-39233-2020, CRM-M-100-2021
CRM-M 138-2021, CRM-M-37627-2020 and
CRM-M-37883-2020.

Mr. Rakesh Kumar Khanna, Sr. Advocate with
Mr. M.F.Khan, Advocate for the petitioner
in CRM-M-40278-2020.

Mr. Puneet Bali, Sr. Advocate with
Mr. Nitin Kaushal, Advocate for the complainant in
CRM-M-39230-2020, CRM-M-37627-2020 and
CRM-M-37883-2020.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Aman Talwar, Advocate and
Mr. Ishan Gaur, Advocate and
Mr. Omar Ahmed, Advocate for the respondent
in CRM-M-39233-2020, CRM-M-100-2021,
CRM-M-37627-2020 and CRM-M-37883-2020.

Mr. Mukul Rohatgi, Sr. Advocate with
Mr. Omar Ahmad, Advocate and
Mr. Aman Talwar, Advocate for the respondent
in CRM-M-138-2021, CRM-M-39209-2021.

Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Omar Ahmad, Advocate for the respondent in
CRM-M-40278-2020.

Mr. Tapan Kumar, DAG, Haryana
for respondent-State.

HARINDER SINGH SIDHU, J.

This order shall dispose of eight petitions bearing CRM-M-100-2021, CRM-M-138-2021, CRM-M-37627-2020, CRM-M-37883-2020, CRM-M-39209-2020, CRM-M-39230-2020, CRM-M-39233-2020 and CRM-M-40278-2020. All these petitions have been filed under Section 438 Cr.P.C for grant of pre-arrest bail in case FIR No.267 dated 28.09.2020 under Sections 406, 408, 420, 467, 468, 471, 506 and 120-B IPC, Police Station DLF Phase-II, Gurgugram.

The FIR has been registered on the complaint of Rajat Luthra, Designated Market Procurement Leader, Phillips India Ltd. (for short "Philips"). In his complaint he alleged that certain vendors as well as former and serving employees of Phillips in a criminal conspiracy with each other prepared fake invoices for services not even requisitioned by Phillips and raised bills in furtherance of the same. The said bills were then cleared in collusion with serving officials of Phillips and payments were made to vendors on behalf of Phillips for services not rendered, thereby causing wrongful loss to Phillips India and wrongful gain to the accused. The alleged amount so misappropriated/embezzled had been estimated to be Rs.8 crores for the period 2019-20 and even prior thereto.

The five vendors named in the FIR are: (1) M/s DA Healthcare (2) M/s H.T. Computers (3) M/s Marrsis Disha (4) M/s PRV Computers India (5) Delphi Infosolutions Private Limited.

The two former employees named were Anuj Gureja and Gaurav Sehgal. Four then serving employees named were Vivek Kumar

Jaiswal (Market Procurement Manager), Sachin Saxena (Third-Party Procurement Executive), Kamal Jain (Finance Business Partner -Corporate Financial Planning and Analysis) and Neeraj Bhatia (Senior Manager, Supply Chain Management). Later their services were terminated.

The modus operandi alleged was that the above named serving employees prepared false Purchase Orders in favour of the five named vendors for procurement of services that were not required. Qua these false Purchase Orders no indent or requisition was sent by the relevant department of Philips.

The vendors then utilized the numbers of these false Purchase Orders, generated fraudulent invoices and sent the same to Phillips demanding payment. It was stated that the Department Head of Phillips K Gopi had also confirmed that no services had been received qua those Purchase Orders and the fraudulent invoices.

It was alleged that after evaluation of the material it had come to light that Anuj Gureja and Gaurav Sehgal, former employees of Phillips were the masterminds behind the illegal operation. They had worked in the Philips `Vendor Management Team' till January 2018 and August 2019 respectively. They understood the loopholes in the procurement process and misused the same for cheating Phillips by processing Purchase Orders, invoices and payments through electronic method. It was stated that this became known when the serving employees namely Vivek Kumar Jaiswal, Sachin Saxena, Kamal Jain, Neeraj Bhatia and Bhanu Gorver were questioned and their Whatsapp messages and e-mails were examined. They admitted that after getting enticed by the conspiracy woven by Anuj Gureja and Gaurav Sehgal, Sachin Saxena alongwith other serving employees prepared fake Purchase Orders . Vivek Kumar Jaiswal accepted/consented to some of the Purchase Orders and helped in the payment of the fraudulent invoices of vendors.

It was alleged that for generating some false Purchase Orders Neeraj Bhatia gave his VPN access credentials to Anuj Gureja and Gaurav Sehgal enabling them to access the systems of Phillips and prepare false Purchase Orders. Kamal Jain as Financial Planner could have found out about the cheating but he concealed the fraud from Phillips. For that he took an amount of Rs. 10 lakh from one vendor. Kamal Jain had admitted that Anuj Gureja was his friend. It was further alleged that in an internal inquiry Vivek Kumar Jaiswal and Sachin Saxena had admitted to being bribed and threatened by Anuj Gureja and Gaurav Sehgal. In December 2019 Anuj Gureja and Gaurav Sehgal. gave Rs.3.80 lacs in cash to Vivek Kumar Jaiswal in lieu of payments of certain amounts to the accused vendors. A number of other cash transactions took place between these accused. Till July 2020 Anuj Gureja and Gaurav Sehgal had paid a total of Rs.31.50 lacs in cash to Vivek Kumar Jaiswal. Sachin Saxena admitted that Anuj Gureja and Gaurav Sehgal paid him Rs.9 lacs in cash for preparing fake Purchase Orders and causing wrongful gain to vendors for payments made qua their invoices. Sachin Saxena also shared on Whatsapp some details of his illegal dealing with Bhanu Grover an employee of Phillips. But Bhanu Grover did not inform Phillips about the same. Bhanu Grover admitted that Anuj Gureja was his old friend and they belonged to the same city (Bhiwani) and Anuj Gureja had helped him in getting a job with Phillips. It was alleged that the Whatsapp messages of the serving employees clearly revealed about the involvement of the accused in the criminal activities. The Whatsapp messages were annexed with the complaint.

It was alleged that having admitted his illegal activities, on July 24, 2020 Vivek Kumar Jaiswal returned Rs.31.50 Lacs in cash to Phillips. Similarly Sachin Saxena having admitted his role in the illegal activities returned Rs.4.70 Lacs in cash to Phillips. He promised to return the remaining Rs.4.30 Lacs out of the 9 lakhs received by him from Gaurav Sehgal and Anuj Gureja. It was further alleged that Kamal Jain had also admitted that he connived in a special manner with Anuj Gureja and obtained approx. Rs.10 Lacs from one vendor namely PRV Computer System (India) Private Limited. The statements of Vivek Kumar Jaiswal, Sachin Saxena and Kamal Jain were enclosed with the complaint. It was further alleged that Vivek Kumar Jaiswal, Sachin Saxena and Kamal Jain informed Phillips that Anuj Gureja was aware of the fact that Phillips was conducting an enquiry qua the payments made to the vendors and had also sought clarification from certain employees. Anuj Gureja sent one Vikram and another person to the house of Vivek Kumar Jaiswal on July 25, 2020 at about 11.00 pm. They forced Vivek Kumar Jaiswal to speak to Anuj Gureja on phone. Anuj Gureja threatened Vivek Kumar Jaiswal of dire consequences if he disclosed about the role of Anuj Gureja. On 06 August, 2020 Rohan Mehtani , the owner of Marrsis Disha orally confessed that in reality no services were provided qua the various invoices issued. In August 2020, Phillips sent e- mails to accused vendors for audit of their invoices and payments, but they did not cooperate. It was alleged that the vendors had failed to provide any proof qua the fraudulent invoices upon which services had been dishonestly billed by them.

Based on the complaint submitted on behalf of Philips initially FIR was registered under Section 408, 420, 506, 120-B, IPC. Later, on the basis of investigation Sections 467, 468 and 471 were added.

Consolidated affidavit on behalf of the complainant.

An affidavit dated 11th January, 2021 has been filed by Rajat Luthra authorised signatory of Philips seeking to highlight the relevant facts.

Going into the background of filing of the complaint it is stated in the affidavit that the Complaint was filed pursuant to certain findings which came to light during an internal review conducted in Philips in the first week of July 2020. The review indicated that excessive costs were being incurred in the Monitoring Analysis and Therapeutic Care ("MATC") of the Health Systems Division of Philips. Philips sought responses from the vendors whose invoices had led to excessive costs but only got evasive replies. A whistle blower complaint was also received. Thereafter Philips hired the services of KPMG, a reputed forensic expert, to conduct a forensic review to ascertain the reasons for the excessive costs.

The forensic review conducted by KPMG included examination of the books and records regarding the above costs/ expenses, interviews of employees, review of their relevant electronic data, transactions with the vendors whose costs appeared excessive/ suspicious, etc. During the forensic review by KPMG two employees namely Sachin Saxena and Vivek Kumar Jaiswal gave a detailed admission of guilt on 24 July 2020. They reiterated the same by way of affidavits before the Executive Magistrate on 12 October 2020 i.e. subsequent to the registration of the FIR. They admitted that they, in connivance with two former employees and five registered vendor (all co-accused in this case), entered into a criminal conspiracy to cheat Philips into releasing payments of over Rs. 4 crores against forged Purchase Orders ("POs") and fake invoices, for services that were never provided by the vendors. The fact that no such services were provided was also confirmed by e-mails of Head of MATC.

It is further stated that the accused carefully planned and systematically executed criminal conspiracy to defraud Philips. They first identified various branches/units of Philips which had high profit margins where it would be easier for them to siphon off money without the fear of being detected. Mr. Anuj Gureja and Mr. Gaurav Sehgal being the former employees of Philips exploited the systems of Philips by misusing the SAP ID and VPN token of the co-accused (serving employees), created several fake POs . The co-accused vendors raised fake invoices against these forged POs. and received payments from Philips.

The vendors after illegally obtaining their payments paid back some amounts by way of kickbacks to Anuj Gureja and Mr. Gaurav Sehgal. The latter after receiving the kickback amount from the vendors used to make payments to then serving employees namely Vivek Jaiswal, Sachin Saxena, Kamal Jain and Neeraj Bhatia.

Along with the complainant's affidavit, the affidavits of Vivek Kumar Jaiswal, Sachin Saxena are annexed. Extracts of the Whatsapp conversations/chats between Anuj Gureja and Vivek Jaiswal on 14th March, 2020, conversations/chats between Sachin Saxena and Bhanu Grover dated 9th June 2020, conversations/chats between Kamal Jain and Siddharth Kitty Group dated 11th June, 2020, between Vivek Jaiswal and Anuj Gureja dated 13th March, 2020, between Vivek Jaiswal and Anuj Gureja dated 5th July, 2020, between Vivek Jaiswal and Sachin Saxena dated 15th June, 2020, between Bhanu Grover(an employee of Philips) and Sachin Saxena dated 6th April, 2020, and between Vivek Jaiswal and Sachin Saxena dated 27th April, 2020 are annexed.

From these chats/ messages it seems clear that money was being received from the vendors in lieu of getting their invoices cleared. Some specific amounts received by various accused are also mentioned.

There is also a message/conversation between Anuj Gureja and Vivek Jaiswal dated 6th July, 2020 with regard to an e-mail drafted by Anuj Gureja which was shared with Vivek Jaiswal on 6th July, 2020 at 13.45 hours for his views. The same e- mail was sent to Philips by Rahul Chandna- Director of HTC which indicates pre-planning and conspiracy on their part. The list of the invoices alleged to be forged has also been appended. These include six alleged fraudulent invoices of Delphi Infosolutions Private Limited (Mr. Dinesh Mahajan is its Director) for which it received an amount of approximately Rs. 67 lakhs. In four of these six invoices the `Place of Delivery' mentions the address of the Warehouse of Philips at Gurugram. It is stated that the Warehouse is operated by an independent third party Expeditors International (I) Pvt. Ltd. for short ("Expeditors Ltd.). There is no record therein of any such service being provided. Further the warehouse is only a temporary storage location for various goods and material before it is delivered to the customers of Philips. In the very nature of things it is not possible to provide the services mentioned in the invoices at a warehouse because such services are to be performed at a customer's location (e.g., a hospital, medical college or technical institution) and not at a storage location where no such equipment is installed. It is further stated that Expeditors Ltd., have also confirmed by e- mail that no such services were received.

It is alleged that 134 fraudulent invoices were raised by HTC (Rahul Chandna is its Director thereof). In 63 of these invoices the address of the place of delivery of services was that of the warehouse of Philips in Chennai, In 33 of these invoices the address of the place of delivery of services was that of the warehouse of Philips in West Bengal. In the remaining 39 invoices the address of the place of delivery of services was that of the warehouse of Philips in New Delhi. All these warehouses are being operated by Expeditors Ltd. Expeditors Ltd by separate e- mails has confirmed that no such services were received.

The State Reply and material collected during investigation.

Separate replies have been filed on behalf of the State in these cases. The specific allegations/ role of the accused has been highlighted in the replies, which will be referred to when dealing with each separate petition.

In the State reply it has been stated that the investigation of the case is being conducted by SIT constituted by the Commissioner of Police, Gurugram. The SIT is working under the supervision of Assistant Commissioner of Police, DLF, Gurugram, Its other members include (1) SHO P.S. DLF Phase-III, Gurugram, (2) SHO P.S. Cyber, Gurugram, (3) Incharge,EOW, Gurugram, (4) SI Ram Niwas, P.S. DLF Phase-III, Gurugram and (5) SI Sunil Kumar, EOW, Gurgram.

It is stated that during the course of investigation accused Vivek Jaiswal and Sachin Saxena were arrested on 13.10.20220. Accused Rohan Mehtani (of Marssis Disha.) was arrested on 26.10.2020. Accused

Vivek Jaiswal got recovered Rs.31.50,000/- and one mobile phone. Accused Sachin Saxena got recovered Rs.9 Lakhs, one laptop and one mobile phone. The bank accounts of the accused have been got freezed by the SIT.

Mr.Yadav Ld. DAG stated that qua the arrested employees Vivek Jaiswal and Sachin Saxena challan has been submitted in Court.

He stated that at the time of registering FIR 123 invoices for approx. Rs. 8.5 crore plus GST =approx. Rs. 10 crore were alleged as fraudulent. These included 99 invoices where the address of the `Place of Delivery' of Service was C/O Expeditors International India Pvt. Ltd. at five different warehouses of Philips (Delhi, Gurgaon, Bangalore, Chennai and West Bengal). Except for a few invoices the name of the hospital/institute where service was rendered has not been mentioned. All that is mentioned is Philips India Ltd. C/O Expeditors International India Pvt. Ltd. A few invoices had mentioned the names of the Hospitals. Statements u/s 161 Cr.P.C. of six Project Managers of the Phillips who work on these hospitals, Incharges of the five warehouses, one IT staff, one Admin Staff (who receives and puts the invoices in the system) and one Mr. Nitin Bonde (who procures third party service from various vendors) were recorded. All of them confirmed that no such services were received.

He pointed out that during investigation, 232 additional invoices for Rs.12 crore were also obtained from the complainant. Most of these invoices also had only the address of the Warehouse. The name of the hospital or institute were service was performed was not mentioned. In some invoices, names of Hospitals or Medical Institutes were mentioned but the Hospitals or Medical Institutes did not exist at the addresses mentioned in the invoices. However, those addresses matched fully or partially with addresses of the Five warehouses. He pointed out that in most of these invoices the address of the warehouse was the same and the name of the customer had been superimposed. Therefore, no customer could be located or found for joining in the investigation. Statements under Sec 161 Cr.P.C. of the Managers of these Warehouses were recorded who on checking their Warehouse management records confirmed that no such service was received in their warehouse. The Project Managers also confirmed about non receipt of such service.

He pointed out that one iPhone was recovered during Rohan Mehtani's custodial interrogation on 27 October 2020. Contents of his WhatsApp Chat with Anuj Gureja was obtained. The WhatsApp messages of Rohan Mehtani's phone show that Anuj Gureja had sent details of 5 POs dated 27 May 2020 through screeenshots to Anuj Gureja. Another image shows Rohan Mehtani messaging Anuj Gureja the details of corresponding invoices dated 28th May 2020 of Marrsis Disha. This WhatsApp message further indicates that 1/5th of the total amount of these Purchase Orders was to be kept by Marrsis Disha (owned by Rohan Mehtani). The remaining 4/5 share (Rs.16,25,000) was to be shared by the co-accused employees.

Mr. Yadav has also referred to the money trail revealed during investigation which connects the accused with one another. Mr. Yadav stated that to uncover the money trail the investigation has covered over 49 bank accounts of the accused persons until 1st February, 2021. More than 73 notices under Section 91 Cr.P. C have been issued for obtaining Bank accounts. Review of the bank statements obtained so far has shown that the accused vendors transferred Rs.4,61,83,741/- through 89 transactions to the bank accounts of Anuj Gureja, Gaurav Sehgal, their wives, front entities such as AHAM Inc. and Tanjah Enterprises and various other companies and LLPs. The total amount of Rs.4,61,83,741 includes amount of Rs. 3,24,50,900 transferred to Anuj Gureja and his family as follows:

Directly in his bank accounts: Rs. 1,19,52,909
In bank accounts of Ms Shagun (wife of Mr. Anuj Gureja) : Rs. 28,30,750
In AHAM Inc's bank accounts: Rs.1,49,67,241
In other entities where Anuj Gureja has an interest: Rs.27,00,000.

This amount does not include transfers to Techno Trendz, where Anuj Gureja is Director and 50% shareholder.

The balance of Rs.1,37,32,841 includes payments to Gaurav Sehgal and his family as follows:

Directly in the bank account of Gaurav Sehgal : Rs. 12,47,5000
In the bank account of Babita Rani (wife of Gaurav Sehgal) : Rs. 34,96,422
In Tanjah Enterprises's bank accounts: Rs. 66,53,423
In other entities (Techno Trendz) where Gaurav Sehgal is 50% shareholder: Rs.23,35,496

The details of these transactions have been filed with the challan submitted in the case of Vivek Kumar Jaiswal and Sachin Saxena.

The question regarding the invoices.

Since the allegations are that the accused entered into a criminal conspiracy and pursuant thereto generated fake Purchase Orders in respect of services which were never requisitioned, the vendors raised fraudulent invoices and received money which was then shared by the accused, the primary focus of the arguments of the petitioners was that the Purchase Orders and the invoices were not fake and fraudulent as alleged and that in fact services had been rendered in respect thereof.

In this regard it was the contention of Mr. R.S. Rai Sr. Advocate who appeared for the accused in seven of these petitions and Mr.

Khanna Sr. Advocate who appeared for Kamal Jain (in Cr.M-M -40278 of 2020) that in view the standard procedures in place in Philips it was virtually impossible to generate the fake Purchase Orders, raise fraudulent invoices and receive payment. It was argued that that Philips is a multinational company. It has well developed and time tested procedures for processing demands raised by its various units/Departments, issuance of Purchase Orders and release of payments in respect of invoices raised. There are various levels of scrutiny before payments are released. Thus a fraud of the kind alleged is virtually impossible. Elaborating on the same it is stated that after raising of a Purchase Order and its booking and before payment is made in respect of an invoice, scrutiny is undertaken at various levels in at least eight departments namely accounts, finance, internal and external auditors, head of accounts and finance departments. They argued that in the face of this it is practically and technically impossible for two former employees and vendors having no access to the software system of the company to first generate a false Purchase Order and then get the payment for the said Purchase Order cleared.

They further argued that all the payments made by Philips and received by the vendors are through banking transactions. While making payment of any Purchase Order the complainant Company has always deducted TDS . The payments received have been duly reflected in the Ledger Account of the companies of the accused- petitioners. They have all maintained a proper and complete record of their dealings with the complainant company which is open to scrutiny. In the face of this no wrongdoing on their part can be inferred. They further argued that in support of the allegations that the services were not provided, what is sought to be relied upon by the complainant and the prosecution are only the statements of the employees of the complainant company and not of the customers of the complainant Company to whom the services were purported to have been rendered. M/s Expeditors Ltd. is the Warehouse arm of the complainant Company. The statements of the Incharges of the Warehouses cannot also be relied upon to infer that no services were provided.

During the course of arguments Mr. Rai by referring to some Purchase Orders of a previous period sought to demonstrate that sometimes a product was delivered or service was provided at one place but it was billed at another location. From amongst the alleged fraudulent invoices mentioned in the consolidated affidavit of the complainant-Rajat Luthra Mr. Rai referred to one invoice of `Malabar Institute of Medical Sciences' (Invoice No. 18- 19/000422 at Pg 84 Item 57 of the consolidated affidavit submitted by the Complainant). He stated that the "Invoice To:" address on the Phillips Purchase Order no. 4513060252 which corresponds with the said invoice was as follows:

> *"Invoice to: 474003*
> *Philips India Limited*
> *C/o Expeditors Intl India Pvt. Ltd*
> *Survey No 523/ 3E2,3F, 3G, 3M*
> *4A, 4B, 5241 B, 2BM, 3A2, Door No. 116*
> *Devaneri Village Road, Sholavar, 600067 Chennai"*

It was explained that it was clear that the characters "5241 B, 2BM, 3A2, Door No. 116" in the Place of Delivery as per Invoice, were a mere erroneous entry since the actual address and the Place of Delivery as per Invoice were substantially the same. It was argued that this minor variation could not be relied upon by the Complainant to question the veracity of the said address. He argued that there were similar minor discrepancies in the other invoices. Only on this account they cannot be termed to be fraudulent.

The complainant has countered this by stating that the purported justification was nothing but a malafide attempt to mislead the court by projecting that the “5241 B, 2BM, 3A2, Door No. 116” was taken by mistake from the “Invoice to” portion of the invoice and reproduced in the “Deliver to” part. Written submissions have been submitted on behalf of the complainant on 8.02.2021. It is stated that the Complainant has sought confirmations from many of its customers including Malabar Institute of Health Sciences (referred to by Mr.Rai) as to whether the service was provided by the vendors and also the address (whether the address mentioned on the “Deliver to” part belongs to them or not). It was confirmed by many of its customers that no service was provided against the invoices raised by the vendors and/or that the address on the “Deliver to “ part also did not pertain to them. Such confirmations were obtained from `Malabar Institute of Health Sciences' in respect of invoices as find mention at Sr. No. 57 and 58 page 84 of the consolidated affidavit filed by the complainant , from `Innovative Medicare Technologies Ltd.' in respect of invoice mentioned at Sr. No. 3 at page 72 of the consolidated affidavit and from `Appolo Hospital- Adlux Medicity & Convention Centre' in respect of invoice mentioned at Sr.No. 12 at page 80 of the consolidated affidavit . All of them through e-mails confirmed that they had not received the stated services. The e-mails received from these institutes were appended with the written submissions submitted on behalf of the complainant on 8.02.2021.

Ld. Senior Counsel for the petitioners further argued that the affidavits dated 12.10.2020 of Mr. Vivek Jaiswal and Sachin Saxena (annexed as Annexures R-2/1 and R-2/2 in the reply affidavit of Mr. Rajat Luthra) which were sought to be relied upon were clearly obtained under duress as is evident from the recitals in paragraph 19 to 21 of the affidavit of Mr. Vivek Jaiswal and Para 15 and 17 of the affidavit of Mr. Sachin Saxena where they identically state that they had executed a similar writing and handed it over to the concerned on 24th July, 2020 in the Board Room of Philips India Ltd. and that in lieu of their co-operation thus far, Philips India Ltd. had put in abeyance suspension of their service They argued that these statements were clearly not voluntary but were obtained either under duress or inducement Mr. Rai asserted that notwithstanding that promise, their services were terminated which points to the unethical conduct of Philips in not keeping its word even after having induced an admission from its employees. They argued that no reliance can be placed on those statements to implicate the petitioners.

With regard to the Whatsapp chats and messages it was argued that as no certificate as required under Section 65-B(4) of the Evidence Act has been obtained and hence these chats/messages cannot be taken into consideration.

These arguments have been countered by Sh. Mukul Rohatgi, Mr. Ashok Aggarwal, Mr. Puneet Bali and Mr. Akshay Bhan Sr. Advocates who appeared for the Philips in different petitions by stating that the material collected so far clearly indicates that the Purchase Orders and invoices were fake.

Mr. Yadav asserted that certificates under Section 65-B of the Evidence Act have also been obtained.

<u>Consideration</u>

The argument about the stringent procedures in place in Philips and the different levels of scrutiny involved before payment is finally released does not lead the petitioners anywhere considering that the allegations are that the serving employees who had to generate the Purchase Order and those who could detect and prevent the fraud were themselves a party to it.

In most of the invoices referred to and alleged to be fraudulent the place of delivery mentioned was one of the five warehouses of Philips. A number of invoices have been pointed out where the hospital/institution mentioned does not even exist. In the reply on behalf of the State it has been asserted that the five warehouses whose addresses were mentioned in the invoices were inspected by the investigating officer and on confirmation it transpired that the services for the amount of about Rs.21 crores were not received as claimed in the invoices of the vendors.. Statement u/s 161 Cr.P.C. of six Project Managers of the Phillips, Incharges of the five warehouses, one IT staff, one Admin Staff (who receives and puts the invoices in the system) and one Mr. Nitin Bonde (who procures third party service from various vendors) were recorded. All of them confirmed that no such services were received.

On the other hand the petitioners have not been able to point to any material to indicate that the stated services had indeed been rendered. The sole invoice from amongst the allegedly fraudulent invoices referred to by Mr. Rai relating to `Malabar Institute of Medical Sciences' in respect of which Mr. Rai has submitted that the address of the `Place of Delivery' was a typographical error has been effectively countered by the complainants by referring to the e- mails of the said institute that the stated service was not received.

The argument on behalf of the petitioners that the payments to vendors is through banking transaction and after deposit of GST and deduction of TDS, hence there is nothing illegal about it has been rightly countered by the complainant by contending that the deduction of TDS and deposit of GST does not legitimise any fraudulent transaction. Any payment made by Philips is through banking transaction and after payment of statutory taxes. The fabricated Purchase Orders themselves provision for the applicable taxes and thus when they are cleared the tax compliances are made. This in no manner establishes that the Purchase Orders and invoices were not fake.

The Whatsapp messages extracted in the consolidated affidavit talk of money being received. The names of all the accused figure in these messages/chats. The trail of money unearthed so far reveals that in some instances the money was paid by the accused vendors soon after the clearance of the invoices.

Mr. Yadav has specifically stated that certificates as required under Section 65-B of the Evidence Act have been obtained. Even otherwise as far as the petitioners herein are concerned the case is at the stage of investigation. The certificate under Section 65-B would be required to be submitted along with the chargesheet. (Ref. Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1).

Significantly none of the petitioners has denied these Whatsapp messages/ Chats. It has also not been suggested that these whatsapp messages/ chats could be construed in any manner other than what is projected by the complainant /State i.e., of money being passed and received as kickbacks for aiding in clearing the fraudulent invoices.

In the face of this material, at this stage, it cannot be said that the allegations of the invoices being fraudulent are without any basis.

In the light of the aforesaid the role of each individual accused needs to be examined

CRM-M-100-2021 :

Sanjay Chawla – the petitioner in this case has been arrayed as accused No.5 in the FIR. He is the Director of Delphi Infosolutions Pvt. Ltd., which is in the business of supplying and maintenance of Computer Products, Networking and IT equipment to its clients, including the Complainant.

In the reply filed on behalf of the State it has been stated that during investigation it has been found that the petitioner, in connivance with other former and current employees of Phillips company, raised six false invoices against the forged Purchase Orders in favour of his company M/s Delphi Infosolutions Pvt. Ltd.. Thereby he cheated Phillips India Limited of an amount of about Rs.67 Lakhs. No work was executed and no service was provided by the petitioner's company qua the said purchase orders. The petitioner transferred Rs.7.5 lakhs twice to the bank account of one of the main accused namely Anuj Gureja. An amount of around Rs.24 lakhs has been found to be transferred from the account of the petitioner's company to the personal accounts of the relatives of accused Anuj Gureja and Gaurav Sehagal and the accounts of the companies established by the said accused persons during the period from May 2014 to July 2020. It is further stated that accused Vivek Jaiswal has admitted in the affidavit dated 12.10.2020 sworn before the Executive Magistrate, that he had received an amount of Rs.31.5 Lakhs from accused Anuj Gureja, so as to cause wrongful gain to the accused vendors, including M/s Delphi Infosolutions Pvt. Ltd. (company of the petitioner).

Ld. Counsel for the petitioner has not been able to refer to any material to indicate that the transfer of money as referred to above was on account of some legitimate dealings between the company of the petitioner and Anuj Gureja and Gaurav Sehgal and entities in which they had interest.

Mr. Mukul Rohatgi Ld. Senior Counsel appearing for the complainanat in this case while opposing the grant of anticipatory bail stressed that before the registration of the FIR 132 invoices were found to be fraudulent. During the investigation after the registration of the FIR another 200 invoices were found to be fraudulent. While initially the amount of the fraudulent invoices was around 8 crores in the course of the investigation it has swelled to 22 crores. He stressed that the custodial interrogation of the accused would be necessary to discover the length and breadth of the scam. He pointed to the affidavits of the two employees Vivek Kumar Jaiswal and Sachin Saxena admitting their involvement and also disclosing about the role of the other co-accused including the petitioner. He stressed that any order granting anticipatory bail will stultify investigation . He argued that there was very strong apprehension of the accused tampering with evidence as the accused had deleted the whatsapp messages containing references to the details of the scam.

CRM-M-138-2021 :

Rahul Chandna – petitioner in this case is arrayed as accused No.2 in the present FIR. He is the Proprietor of M/s HT Computers, which is in the business of supplying and maintenance of IT equipment to its clients, including the Complainant.

In the reply filed on behalf of the State it is stated that it has come forth during investigation that the petitioner, in connivance with other former and current employees of Philips, raised false invoices against 134 forged purchase orders in favour of his company namely M/s HT Computers, by using the VPN of accused Neeraj Bhatia and SAD ID of accused Sachin Saxena, and thereby cheated Philips of about Rs.10 crores. No work was executed and no service was provided by the petitioner's company qua the said purchase orders. Moreover an amount of around Rs.1.18 crores has been found to be transferred from the account of the petitioner's company to the personal accounts of accused Gaurav Sehgal and Anuj Gureja and in the accounts of their relatives and of the companies established by the said accused persons in the period from March 2018 to March 2020. It is further stated that the whatsapp messages between co-accused Vivek Jaiswal and Anuj Gureja regarding making payments to Vivek Jaiswal for facilitating fraud on the complainant also prove that the petitioner has made wrongful gains.. The affidavit of Vivek Jaiswal before the Executive Magistrate also corroborates the allegations with regard to the petitioner.

Ld. Counsel for the petitioner has not been able to refer to any material to indicate that the transfers of money were on account of some legitimate dealings between the company of the petitioner and Anuj Gureja and Gaurav Sehgal and entities in which they had interest.

CRM-M-37627-2020 :

Dinesh Mahajan – petitioner in this case has been arrayed as accused No.1 in the FIR. He is the Director of M/s DA Healthcare which is in the business of supplying, installing and maintaining medical/ healthcare equipments including MRI, CT Scan machines etc.

Mr. Yadav Ld. DAG has stated that as per the investigations among the invoices found to be fraudulent there are a number of invoices of M/s DA Healthcare. Further as per the money trail unearthed so far an amount of approximately Rs. 59,95,000/- has been deposited in account of Anuj Gureja from the account of M/s DA Healthcare. An amount of approximately Rs. 1888000/- has been credited to the account of Aham Inc. from its account. An amount of Rs. 1425000/- has been transferred to the account of Babita Rani wife of Gaurav Sehgal.

Ld. Counsel for the petitioner has not been able to refer to any material to indicate that these transfers were on account of some legitimate dealings between the company of the petitioner and Anuj Gureja and Gaurav Sehgal and entities in which they had interest and were not by way of kickbacks as alleged.

CRM-M-37883-2020 :

Khushal Jain – petitioner in this petition has been arrayed as accused No.4 in the FIR. He is the Director of M/s PRV Computer System (India) Pvt. Ltd., which is in the business of supplying and maintenance of IT equipment to its clients, including the complainant.

Mr. Yadav Ld. DAG stated that as per the investigations among the invoices found to be fraudulent there are a number of invoices of M/s PRV Computer System (India) Pvt. Ltd. The money trail unearthed so far reveals that an amount of Rs. 1594976/- has been transferred from the account of M/s PRV Computer System (India) Pvt. Ltd. to the account of Aham Inc. An amount of Rs.474999/- has been transferred from the account of M/s PRV Computer System (India) Pvt. Ltd to the account of Babita Rani wife of Gaurav Sehgal. Rs. 466,320/- has been paid into the account of Tanjah Enterprises.

Ld. Counsel for the petitioner has not been able to refer to any material to indicate that these transfers were on account of some legitimate dealings between the company of the petitioner and Anuj Gureja and Gaurav Sehgal and entities in which they had interest.

CRM-M-39209-2020 :

Anuj Gureja - petitioner is arrayed as Accused No.6 in the FIR. He joined Philips in November, 2009 as Assistant Manager in Purchase Department. Thereafter he was promoted as Deputy Manager Procurement in 2012. In 2015 he was promoted as Manager Procurement and got the overall responsibility of Healthcare procurement. In June 2017, he was shifted/promoted from Procurement Department and was given the charge of Ultrasound Business Manager for whole of India. In November, 2017 he resigned from the Complainant Company and joined Bose India.

In the reply filed on behalf of the the respondent – State of Haryana it has been stated that the investigation has revealed that the petitioner and co-accused Gaurav Sehgal were fully conversant with the working of purchase mechanism of Philips. They are the main abettors and conspirators of the case. The petitioner connived with some present employees of Philips as well as the accused vendors to cheat Philips. He along with co-accused Gaurav Sehgal managed some serving employees to exploit the loop holes in the system of Philips. It is stated that investigation has revealed that the petitioner is running twelve companies with co-accused Gaurav Sehgal, Neeraj Bhatia, Bhanu Grover and others. The petitioner wrongfully gained more than Rs.48 Lakhs from the co-accused vendors during 2018-2020. The amount was transferred from the accounts of the co-accused vendors to the accounts of the petitioner, Gaurav Sehgal and in the accounts of the companies established by them. Some amount from vendors also went to the personal account of the petitioner through his wife's account. He gave Rs. 9 Lakhs to co-accused Sachin Saxena for using his SAP ID.

This role of the petitioner is clearly evident from the whats app chats. There is no explanation from the petitioner and the co-accused about what were the dealings between them which occasioned these monetary transactions.

CRM-M-39233-2020 :

Gaurav Sehgal- petitioner in this case is arrayed as Accused No.7 in the FIR. He joined Philips in September 2010 as Assistant Manager for Health System Procurement. In 2012 he was promoted as a Deputy Manager for Health System Procurement. In 2015 he was promoted to Manager level for Health System Procurement. In 2016 he was shifted to Procurement of Real Estate Commodity. In 2017 he was promoted to the post of Senior Manager. Same year he was shifted to Media Marketing Events Commodity along with Real Estate Commodity. He resigned from the Complainant-Company and was relieved on 30.08.2019.

In the reply filed on behalf of the State it has been stated that it has come forth during the investigation that the petitioner, along with co-accused Anuj Gureja, was fully conversant with the working of purchase mechanism of the Philips They are the main abettors and conspirators of the case. It is further stated that the petitioner connived with some present employees of Philips as well as some vendors, and was instrumental in commission of cheating and forgery with the company. He along with co-accused Anuj Gureja managed some present employees to exploit the loop holes in the system of Philips. Moreover, the petitioner is running twelve companies with co-accused Anuj Gureja, Neeraj Bhatia, Bhanu Grover and others. The petitioner wrongfully gained Rs. 41 Lakhs through various bank transfers from the vendors out of proceeds of the crime during 2018-2020. The amount was transferred from the vendors to the personal accounts of the petitioner, co-accused Anuj Gureja and in the accounts of the companies established by them. The role of the petitioner also clearly comes forth from the whatsapp chats.

CRM-M-40278-2020 :

Kamal Jain- petitioner in this petition is arrayed as accused No.10 in the FIR. He has been working with M/s Philips India Limited since 2012 as Financial Planner.

In the reply filed on behalf of the State it has been stated that it has come forth during investigation that the petitioner is actively involved in the present offence as he received an amount of Rs. 10 lakhs from M/s PRV Computer Systems Pvt. Ltd. one of the accused vendors. Moreover, co-accused Vivek Jaiswal in his affidavit dated 12th October, 2020 has stated that the petitioner assisted Anuj Gureja and Gaurav Sehgal in knowing about the Cost Centre so as to create false purchase orders. The above role of the petitioner also comes out from the whats app chats. It is stated that the mobile phone of the petitioner has to be got recovered from him so as to obtain the whatsapp chats between him and the other co-accused. These whatsapp chats had been deleted by him and require to be retrieved after recovering the mobile phone.

Mr. Khanna Ld. Senior Counsel for the petitioner contended that the only allegation against his client is the one in paragraphs 11 and 15 of the affidavit of Vivek Jaiswal. In paragraph 11 with regard to the petitioner all that has been stated is that *"Anuj informed about some Purchase Orders, where Mr. Kamal Jain, another employee of Philips, assisted in knowing the provision in cost centre so that the invoices could be posed without hitting P&L."* In paragraph 15 the relevant reference is *"I understand that Neeraj Bhatia and Kamal Jain (P & L Manager) are also involved in these activities but I have not met them together with Anuj and Gaurav"* Mr. Khanna contended that these indirect and doubtful references to him are not sufficient to infer the involvement of the petitioner in any wrongdoing.

He further argued that the petitioner being the Financial Planner of the Company is not associated with the Vendor Management and Purchase Department. The job profile of the petitioner is completely restricted to Financial Planning. The petitioner has no dealing with the outsourcing team (vendor management) wherein the purchase orders are issued or vendor management is carried out by the management of the company.

He stated that during the internal inquiry his laptop and mobile phone was taken The same was returned after one month. He has repeatedly gone to the Investigating Officer and offered to hand over his mobile phone to him for investigation. He further argued that the case is based on documentary evidence. The documents being relied on by the prosecution have been prepared by the complainant. The actual purchase orders have not not even been seen.

Mr. Ashok Aggarwal Ld. Senior Counsel appearing for the complainant on the other hand argued that the fraud could not have been committed without the active involvement of the petitioner. He argued that there were as many as 20 Departments in Philips. Some of them had substantial profits, some less profit and in some departments there may be no profits. As the Head of Finance it is only the petitioner who could disclose about the Department where it was possible to fabricate Purchase Orders without detection. It was only he who could identify the employees who could help in this. He further referred to the whatsapp chats where the name and role of Kamal Jain is evident. He argued that the complete modus operendi , the number of people involved, identities of the yet unknown co-conspirators and the trail of money siphoned off by the petitioner and the other co-accused needs to be unearthed. He stressed that that the offences have been committed with the sole motive to defraud and cheat and unjustly enrich the accused by forgery and cheating. He argued that from the material collected so far the role and involvement of the petitioner is clearly borne out.

Mr. Yadav Ld. DAG highlighting the role of the petitioner in the conspiracy referred to his service details. The petitioner has worked with Philips from 1.12.2011 until his suspension on 22.10.2020 and termination in November 2020.

During this period he held various positions as follows:

From 01.12.2011 to 2014 he was in the (Financial Planning and Analysis) in Health System Division (which included MATC/PCMS ; Imaging System (IS) and Customer Services). From 2014 to 2016 he was the Regional Commercial Manager for North and West. From 2016 to 2018 he was Financial Business Partner for MATC/PCMS and Ultrasound businesses. From 01.08.2018 to 22.10.2020 he was - Corporate Financial Planning and Analysis (Finance Business Partner) and was overseeing multiple Profit and Loss Accounts at the Health Tech business. This was a senior position and included various tasks for the Health Tech businesses.

Mr. Yadav argued that as the petitioner was leading the Finance/Accounts Branch (MATC) of Philips he was able to control the accounts of the Healthcare business. He being a Chartered Accountant had the visibility and knowledge of where to park the fraudulent costs so that they could not be detected (such as in areas where the profit margins were higher so that the fraud would not raise red flags).

He referred to the WhatsApp chats dated 12 March, 2020 between Vivek Jaiswal and Anuj Gureja and 9 June 2020 between Bhanu Grover and Sachin Saxena where the role of the petitioner is evident. There is a reference to some Purchase Orders having been got made by the petitioner and explicit references to certain percentage of the amount to be paid to the petitioner and the other co-accused. There is another message between Bhanu Grover and Sachin Saxena that as per the discussions in the company the petitioner may be divested of the charge of PCMS so future payments will be stopped.

What emerges from the above is that the petitioner received Rs. 10 lakh from M/s PRV Computer Systems Pvt. Ltd. one of the co-accused vendors. There is no explanation from the petitioner regarding this. The various whattsapp chats between the co-accused clearly speak of the role of the petitioner in getting prepared some false Purchase Orders, of he along with other co-accused employees getting a share out of the money received from the co-accused vendors. There is explicit reference that if the petitioner is divested of the charge of PCMS as proposed it may put an end to the entire fraud. The contentions on behalf of the petitioner that because of his role as Financial Planner he had no concern with the Vendor Management and Purchase Department and could not facilitate the fraud does not appear convincing in view of his position and designation as pointed out by Mr. Yadav. Besides the references to him in the whatsapp chats negate his contention.

CRM-M-39230-2020 :

Neeraj Bhatia – petitioner in this petition has been arrayed as accused No.11 in the FIR. He joined Philips on 27.09.2010 as Assistant Manager Order Management. In April, 2013 he was promoted to the post of Deputy Manager in the same Division. In April, 2015 his designation was changed to Regional Order Fulfilment Manager. He was entrusted with South, West and Sri Lanka regions for all modalities of Healthcare. He was leading a team of four people to manage the said regions. In November, 2019 he was asked to lead another team of Ultrasound Order Managers. In April, 2020 he was promoted as Senior Manager Order Management.

In the reply filed on behalf of the State it has been stated that it has come forth during investigation that the petitioner in conspiracy with current and former employees of Philips used the VPN and SAP systems, prepared the forged invoices/purchase orders and submitted the same to the company. Moreover, by alluring current employees by way of kick-backs, he got payment for such fraudulent invoices released. The petitioner was suspended from the Company for his active participation in illegal activities by sharing his VPN details etc. to other co-accused for creation of fake purchase orders. He also deleted all the whatsapp messages between him and other accused in this case, before attending the internal enquiry of the company. Moreover, the petitioner is the Director in various companies of accused Anuj Gureja and Gaurav Sehgal.

In the consolidated affidavit filed by Rajat Luthra on behalf of – the complainant it has been stated that the petitioner has been an employee of PIL since 2010 and was working as a Senior Manager, Order Management with the Health Systems division of Philips. He is a senior person and managed a team of seven persons which included four for MATC Order Management and three for Ultrasound (US) Order Management. He in conspiracy with the vendors, former employees and current employees, facilitated the creation of false Purchase Orders by providing his VPN credentials which allowed entry by unauthorised people into IT network of Philips. Fraudulent Purchase Orders were created in the SAP system for vendors to facilitate payment of their fraudulent invoices.

It is further stated that petitioner admitted in his written statement dated 27 July, 2020 provided during forensic review by KPMG that he knows Mr.Anuj Gureja and Mr.Gaurav Sehgal and formed a company with them. Before his interview with KPMG he deleted his WhatsApp messages with Mr.Anuj Gureja and Mr.Gaurav Sehgal and any common group with them.

Conclusion

Ld. Counsel for the petitioners have argued that the entire case is based on documentary evidence. The records of the payments received is duly maintained in the accounts of the companies of the petitioners. The alleged fake invoices have already been unearthed. All that needs to be determined is whether they are fake or not and whether they are in respect of services rendered or not. The accused vendors have a long standing association with the complainant company. They retain the association with the complainant company are still providing services to its customers. They are ready and willing to co-operate with the investigating agency . There is no apprehension of the petitioners fleeing from justice. There is no justification for custodial interrogation of the accused.

On the other hand the Ld. Counsel for the State as also for the complainant have in unison argued that considering the nature of the allegations the petitioners are not entitled to the grant of anticipatory bail. Their custodial interrogation would be necessary to unravel the entire extent of the conspiracy and make recoveries.

On the basis of the material aforesaid it appears that all the accused have entered into a conspiracy to cheat and defraud the complainant company. There is no material to show that services were actually rendered in respect of the allegedly fraudulent invoices. There is no explanation for the money transactions between the vendor companies and the ex-employees of Philips and the entities in which they had interest. The Whatsapp messages quite clearly convey about money being received as consideration of payments being made in respect of the Purchase Orders and invoices.

In the light of all the above and considering the stage of the investigation and the fact that the complete modus operendi, the number of people involved, identities of the yet unknown co-conspirators and the trail of money siphoned off by the petitioners needs to be unearthed, I am of the view that it is not a fit case to grant anticipatory bail to the petitioners.

Dismissed.

March 16, 2021 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned Yes
Whether Reportable Yes / No