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

CRM-M-50312-2021

Date of decision : 02.12.2021

Udey Bhan and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vivek Goyal, Advocate for the petitioners.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Mayank Sharma, Advocate for respondent No.2.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of concession of pre-arrest bail in case Complaint No.116 of 2021 dated 23.08.2021 titled Sanjiv Kumar Aggarwal Vs. Udey Bhan Sharma and others, under Sections 420/467/468/471/473/475 read with Section 120-B of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Chhappar, as the petitioners have been summoned through non-bailable warrants for 04.01.2022.

Learned counsel for the petitioners has submitted that in the

present case, respondent No.2 had filed a complaint bearing No.5918 dated 30.07.2020 before the Superintendent of Police, Yamuna Nagar against the petitioners and after the enquiry was conducted, no FIR was registered as no offence was made out. Thereafter, respondent No.2 had filed a complaint under Section 156(3) of Cr.P.C. before the Judicial Magistrate Ist Class, Yamuna Nagar, on the basis of which, FIR No.266 dated 28.10.2020 was registered under Sections 420, 467, 468, 471, 473, 475 and 120-B of the IPC, Police Station Chhappar. The petitioners had joined the investigation and after thorough investigation, a cancellation report was submitted on 25.03.2021. Thereafter, respondent No.2, filed a protest petition wherein, vide order dated 10.09.2021, the petitioners were summoned to face trial. Reference has been made to zimni orders, moreso zimni orders dated 13.10.2021 and 29.10.2021 (Annexures P-4 and P-5, respectively) in order to show that the petitioners were not served. It has been argued that in spite of the petitioners having not been served, bailable warrants were issued against them for 17.11.2021 vide order dated 29.10.2021 (Annexure P-4). Once, the petitioners learnt about the said proceedings, they had applied for anticipatory bail before the Court of Additional Sessions Judge, Yamuna Nagar at Jagadhri on 16.11.2021 i.e. prior to 17.11.2021 with the objective of appearing in the complaint case. However, the Additional Sessions Judge, Yamuna Nagar at Jagadhri, had dismissed the anticipatory bail application filed by the petitioners on 23.11.2021 and in the meanwhile, on 17.11.2021, non-bailable warrants were issued against the petitioners for securing their

presence for the next date i.e. 04.01.2022. It has been contended that petitioner Nos.1 and 2 were busy in the ring ceremony of their daughter and the same was going to be performed on 18.11.2021 and marriage of their daughter was to be performed on 21.11.2021 and thus, on account of being busy and occupied with the same, could not appear on 17.11.2021. It has further been argued that with respect to observation made in the impugned order dated 17.11.2021 (Annexure P-7) to the effect that brother of Daya Parkash (petitioner No.3) i.e. Sumit was informed about the case, is incorrect inasmuch as petitioner No.3 does not have brother bearing the name Sumit and does not have any neighbour either with the said name. It has been submitted that since primary purpose of issuance of the summon/non-bailable warrants against the petitioners is securing their presence/appearance before the trial Court, thus, the petitioners undertake to appear before the trial Court within a period of 15 days from today and also further undertake to appear on each and every date in the complaint case except on those days when their appearance is personally exempted by the trial Court and also stated that in fact, in the present case, dispute is of a civil nature, in which the petitioners had acted in accordance with the settlement which was executed between the parties.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and Mr. Mayank Sharma, Advocate appears on behalf of respondent No.2 and have submitted that they are fully prepared to argue the matter and assist this

Court. They have opposed the present petition for grant of pre-arrest bail to the petitioners and have submitted that on 17.11.2021, the petitioners should have appeared before the trial Court, especially since they applied for anticipatory bail on 16.11.2021, and their non-appearance on 17.11.2021 after having the knowledge of the proceedings, is not justified.

Keeping in view the abovesaid facts and circumstances, moreso the fact that in the present case, after the FIR was registered, the petitioners had joined the investigation and then, a cancellation report was submitted and, the petitioners were never served before 29.10.2021 initially and thus, issuance of bailable warrants on 29.10.2021 was not justified and at any rate, since the petitioners, on the basis of legal advice, had filed a petition for grant of anticipatory bail on 16.11.2021 i.e. prior to 17.11.2021, the petitioners were under the impression that they would have to wait for the decision in the anticipatory bail application matter and also, the fact that there was a marriage/ring ceremony of the daughter of petitioner Nos.1 and 2, which was also to be performed during that period in question and also, the fact that the present dispute is a dispute between two parties who were earlier members of the governing body of a society and also, in view of the fact that the petitioners have undertaken to appear before the trial Court within a period of 15 days from today and also, the fact that the custodial interrogation of the petitioners is not required in the present case, the present petition for anticipatory bail is allowed subject to the condition that the petitioners would appear before

the trial Court within a period of 15 days from today and the petitioners would be released on bail subject to their furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate and also subject to deposit of Rs.5000/-, as costs, before the trial Court within a period of 15 days, which would be paid to the complainant and also subject to the fact that the petitioners would furnish an undertaking that they would appear before the trial Court on each and every date unless their appearance is personally exempted by the said Court.

It is, however, clarified that in case, the petitioners do not appear within a period of 15 days from today before the trial Court and do not deposit Rs.5000/- as costs, then, the present petition would be deemed to have been dismissed.

02.12.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**