

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-51163-2021

Date of decision : 13.12.2021

Shah Paresh Kumar @ Shah Paresh Mahendra Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Pankaj Kundra, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail in FIR no.115 dated 01.08.2020 registered under Sections 406, 420, 120-B IPC at Police Station Anandpur Sahib, District Rupnagar.

Learned counsel for the petitioner has submitted that in the present case, a civil dispute has been sought to be given a criminal colour. It is submitted that the petitioner is working as a broker / commissioner / agent and was dealing in fabrics that were sent from Ahmadabad and Gujrat to Punjab and various other places and he used to get a settled commission for facilitating the cloth business between the traders in Ahmadabad and Punjab i.e. got the demanded material delivered directly from the shops / manufacturers based in Ahmadabad to the place of purchasers and in return

this business since a long time and the bank account statement which is annexed as Annexure P-2 would show that the commissions have been received by the petitioner from the manufacturers / sellers. It is also submitted that the name of the father of the complainant is Sarabjit Singh Luthra and he is the owner of a garment factory by the name of "The SARMAN Z Textiles" and the said complainant's father used to buy finished fabric from Ahmadabad and after making garments, the same were supplied to retail sellers / shops in Ahmadabad and in the year 2018, the father of the complainant had approached the petitioner through an old client, and had requested the petitioner for the material to be supplied from Ahmadabad to his factory and thereafter a business relationship developed between the parties and the petitioner, being a commission agent, procured fabric from various firms in Ahmadabad, namely Gupta Brothers, Silky Overseas, Rohan Fabrics, Lalchand Hirachand and Viru Textiles Mill Pvt. Ltd. etc. and the same delivered directly from the said manufacturers to the factory of the complainant. Reference has been made to serial nos.78 and 85 at page 23 as well as no.26 at page 25 to show that the petitioner was getting commission from the father of the complainant as well. Reference has also been made to Annexure P-3 which would show that there was a ledger account between the above said persons and the complainant. It is further submitted that in the year 2018, when the father of the complainant had requested the petitioner to manage purchasers of complainant's factory made garments and the said purchasers in Ahmadabad were introduced to the petitioner by the father of the complainant as they already had a professional relationship with the father of the complainant and the said purchasers included Lukesh Kumar Khitrani, Rohit Maruti, Kishan, Raju,

Harish, Kumar Manohar Lal and Munish, who are also arrayed as accused in the present case. It is further argued that the said purchasers disappeared in the year 2019 and stopped making payments to the complainant's father and on account of same, the complainant and his father defaulted in payment which was to be made to the manufacturers and since the complainant's father had given some security cheques to the said manufacturers, thus, the said manufacturers initiated proceedings under Section 138 of the Negotiable Instruments Act (in short 'N.I. Act') against the father of the complainant and reference in this regard has been made to Annexure P-4 (colly) which shows the status of the said cases. It is further argued that as a counter blast, the present FIR has been registered, in which allegations have been made to the effect that the aggregate amount of Rs.1 crore, i.e. Rs.50 lacs in December, 2017 and Rs.50 lacs in February 2018 had been paid to the petitioner in cash at Sri Anandpur Sahib, with the further allegation that readymade garments worth Rs.2.5 crores had been sold to the above said purchasers at the instance of the petitioner on the promise that the petitioner would send the family of the complainant to Canada. In this respect, it is further submitted that the petitioner has never visited Sri Anandpur Sahib and the question of receiving the payment of Rs.1 crore in cash without any receipt is, on the face of it a false allegation as no person, much less a businessman, would pay such a huge amount without there being any proof in writing to that effect. It is further submitted that there is nothing to even remotely show that it was the petitioner who had asked the complainant or his father to deliver goods worth Rs.2.5 crores to the purchasers in Ahmadabad and that the petitioner has been made a scapegoat in the present case. It is further submitted that in any case, the

petitioner has been in custody since 04.10.2021 and the challan in the present case has already been presented and there are as many as 14 prosecution witnesses and none of them have been examined and thus, the trial is likely to take time and there is no other case pending against the petitioner and thus, prays that present petition for regular bail be allowed.

Learned State counsel has opposed the present petition for regular bail and has submitted that as per the allegations made in the FIR and as per the prosecution case, the payment of an amount of Rs.50 lacs in cash had been made to the petitioner on two occasions and garments worth Rs.2.5 crores were supplied to Lukesh Kumar Khitrani, Rohit Maruti, Kishan, Raju, Harish, Kumar Manohar Lal and Munish on the asking of the petitioner. It is submitted that a huge financial loss has been incurred by the complainant at the hands of the petitioner. The facts that the challan has been presented, the petitioner has been in custody since 04.10.2021 and the petitioner is not involved in any other case have however, not been disputed.

This Court has heard learned counsel for the parties.

The present case has civil tappings. The question as to whether Rs.1 crore was actually paid by the complainant or his family to the petitioner in cash, without there being any receipt to that effect and as to whether the said garments were actually supplied to the said purchasers on the asking of the petitioner, without there being any receipt to the said effect, are a matter of debate which would finally be adjudicated upon during the trial. A perusal of Annexure P-2 would show that the commission had been paid by the complainant's father to the petitioner which lends weight to the argument of learned counsel for the petitioner to the effect that

the petitioner was working as a commission agent. A perusal of Annexure P-3 would show that there were ledger accounts between the manufacturers and the complainant's firm / factory and certain cases under Section 138 of the N.I. Act have been stated to have been filed by the said persons against the firm of the complainant's father, which is *prima facie* clear from Annexure P-4. The petitioner has been in custody since 04.10.2021 and the challan has already been presented in the present case and there are as many as 14 prosecution witnesses, none of whom have been examined and thus, the trial is likely to take time, moreso in view of the present pandemic and the petitioner is not involved in any other case.

Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to his not being required in any other case.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

December 13, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No