IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

204 **CRM-M-3627 of 2022**
Date of decision : 02.02.2022

Mahender Kumar **..........Petitioner**

VERSUS

State of Haryana **........Respondents**

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr.Deepak Pathak, Advocate, with
Mr.Vijay Dahiya, Advocate, for the petitioner.

Mr.Kanwar Sanjiv Kumar, AAG, Haryana.

Mr.Kamal Sehgal, Advocate, for the complainant.

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VINOD S. BHARDWAJ, J. (Oral)

(1) This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

(2) Learned counsel appearing on behalf of the petitioner contends that the petitioner is in custody since 03.01.2022. It is submitted that petitioner has been falsely arraigned as an accused for the reason that the petitioner discontinued his employment with the complainant-Company. Reference is made to the allegations culled out in the FIR to contend that the allegations are general in nature and that the transfer of money into his personal account does not translate into any *prima facie* involvement of the petitioner in the commission of any offence. It is further submitted that the FIR in question was registered in the year 2017 and has remained pending with the investigating agency. Reference was also made to the observation recorded by the lower Court to the specific entries of cash deposit in the

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account of the petitioner and submit that said amounts deposited in the account of the petitioner were friendly borrowings by the petitioner to construct his house and that no investigation into the same has been conducted by the investigating agency. It is further submitted that co-accused Sharad Kumar Ahuja has already been granted concession of anticipatory bail by the learned Court below and that the case of the petitioner is at par. Therefore, the petitioner deserves the concession of regular bail.

(3) Learned State counsel, on the other hand, submits that the petitioner, in connivance with other officials/employees of the Company, had embezzled the amounts due to the Company by forcing the distributors of the Company to pay money. Statement of one of the distributors namely Rajesh Maurya has been recorded by the investigating agency during the course of investgation wherein it has been submitted by him that an amount of Rs.70,000/- was transferred by him to the petitioner under the threat of cancellation of distributorship by the petitioner. It is submitted that investigation has yet not concluded. It is also pointed out that the petitioner was declared as proclaimed person in another case for which a separate FIR stands registered. Learned State counsel also points out that other co-accused of the petitioner in this case are absconding and are yet to be arrested. He has expressed apprehension of the petitioner absconding after availing bail.

(4) Sh.Kamal Sehgal, Advocate, appears on behalf of complainant and states that the petitioner along with other co-accused had embezzled an amount of more than Rs. 1.33 Crores by hacking the password of the system of the complainant Company and transferring the amounts in their

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own account. Apart therefrom, the petitioner as well as other accused indulged in pressurizing/threatening the distributors of the company to make illegal payments to them, failing which the distributorship in their favour was threatened to be cancelled. It is further submitted that the petitioner had received an amount of Rs.18 Lakhs in his account and that huge cash deposits were made in the account of the petitioner which such entries are not supported by other deposits made in his account. The transaction corroborates that the petitioner was indulging in receipt of illegal benefits from the distributors. The allegations have been corroborated by the distributor by getting his statement recorded. It has been urged that the grant of concession of bail at this stage to the petitioner is likely to prejudice the investigation which has already been much delayed. Besides, other co-accused of the petitioner are yet to be arrested. Huge recoveries are to be effected and the entire modus operendi needs to be busted.

(5) Learned counsel appearing on behalf of the petitioner has reiterated his submission in response. He has not disputed about the petitioner having been declared as a proclaimed person but submits that the same is in another case and not the case in hand. It is urged that the petitioner could not join the investigation of the case despite receipt of notices due to his proclamation and that his absence to report for enquiry was not intentional.

(6) I have heard learned counsel appearing on behalf of the parties and have gone through the pleadings and documents appended.

(7) The Hon'ble Supreme Court has reiterated various parameters to be kept in mind by the High Courts/Subordinate Courts while dealing

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with the applications pertaining to grant of bail. The observations of the Hon'ble Supreme Court in the matter of ***Ranjit Singh Vs. State of Madhya Pradesh and others (2013) 16 SCC 797*** are extracted as under:-

> *"20 In Chaman Lal vs. State of UP. this Court, while dealing with an application for bail, has stated that certain factors are to be borne in mind and they are: -(SCC p.527, para 9)*
>
> *".... (1) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;*
>
> *(2) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and*
>
> *(3) prima facie satisfaction of the court in support of the charge."*
>
> *21. In Prasanta Kumar Sarkar vs. Ashis Chatterjee, this Court, while emphasizing on the exercise of discretionary power generally has to be done in strict compliance with the basic principles laid down in plethora of decisions of this Court, has observed as follows: -(SCC p.499, para 9)*
>
> *"9... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:*
>
> > *(i) whether there is any prima facie or reasonable ground to [be believed] that the accused had committed the offence;*
> >
> > *(ii) nature and gravity of the accusation;*
> >
> > *(iii) severity of the punishment in the event of conviction;*
> >
> > *(iv) danger of the accused absconding or fleeing, if released on bail;*
> >
> > *(v) character, behavior, means, position and standing of the accused;*
> >
> > *(vi) likelihood of the offence being repeated;*

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> *(vii) reasonable apprehension of the witnesses being influenced;*
>
> *and*
>
> *(viii) danger, of course, of justice being thwarted by grant of bail."*

The said principles have been reiterated in Ash Mohammad v. Shiv Raj Singh .

22. In this context, we may refer with profit to the recent pronouncement in CBI vs. Vijay Sai Reddy, wherein the learned Judges have expressed thus: (SCC p.465, para 34)-

> *"34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.*
>
> *(emphasis in original)*."

(8) The aforenoticed principles have been reiterated by the Hon'ble Supreme Court of India in the matter of ***Union of India through***

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Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan (2021) 10 SCC 100. The guiding principles laid down in the matter of ***Prasanta Kumar Sarkar Vs. Ashis Chatterjee*** were reiterated in its judgment delivered by the Supreme Court on September 22, 2021. Considering the instant petition in light of the guiding principles laid down by the Hon'ble Supreme Court, it is apparent that the allegation of the petitioner threatening the distributor(s) to make deposits has been supported by the victim. There is *prima facie* evidence also to substantiate that various entries pertaining to large sums of money were reflected in the account of the petitioner. It has remained undisputed that the petitioner remained absconding and was eventually declared as a proclaimed person. Even though the same was in an another case, the same does reflect upon the antecedents of the petitioner. The investigation in the matter has yet not been completed and other co-accused of the petitioner have been evading arrest. The apprehension of the prosecution about the petitioner absconding or fleeing from the process of law cannot be said to be misplaced. The investigation of the case has already been much delayed. The apprehension of the prosecution sounds reasonable and is not without any valid foundation. The Hon'ble Supreme Court has further dealt with issue of 'reasonable ground to believe' in the judgment of ***Union of India Vs. Mohd. Nawaz Khan*** (supra) and observed as under:-

> *22. The standard prescribed for the grant of bail is 'reasonable ground to believe' that the person is not guilty of the offence. Interpreting the standard of 'reasonable grounds to believe', a two-judge Bench of this Court in Shiv Shanker Kesari (supra), held that: (SCC P.P.801-02, Paras 7-8 & 11)*

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> *"7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.*
>
> *8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".*
>
> *"7. … In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."*
> *[See Municipal Corpn. Of Delhi vs. Jagan Nath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board vs. Unique Erectors (Gujarat) (P) Ltd.]*
> *10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation.(See Municipal Corpn. Of Greater Mumbai v. Kamla Mills Ltd.[(2003) 6 SCC 315]*

(9) The apprehension of the prosecution about the petitioner absconding from the process of law and about his involvement in

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commission of offence is reasonable as per the *prima facie* expression elucidated by the Hon'ble Supreme Court, as well.

10. Further, the plea of parity with Sharad Kumar Ahuja claimed by the petitioner is also not made out. Learned Additional Sessions Judge, Gurugram, while dealing with the application of the petitioner has recorded as under:

> *" (6) The applicant-accused is seeking regular bail while invoking parity since the co-accused Sharad Kumar Ahuja is on interim ancitipatory bail granted vide order dated 07.01.2022 passed by this Court. The co-accused Sharad Kumar Ahuja was facing allegations only with regard to 4 entries of Rs.5,000/- each in his bank account on 29.04.2017 whereas the applicant-accused had allegedly received deposits in his bank account total amounting to Rs.6,35,330/-. One such entry is of Rs.70,000/- dated 02.06.2016. On distributor of the company namely Mr.Rajesh Maurya has stated before the investigating officer that the applicant-accused Mahender Kumar had threatened to cancel his distributorship in case the amount in not given to the applicant. Fearing the cancellation of distributorship, Rajesh Maurya got transferred Rs.70,000/- in the bank account of the applicant through the account of his brother-in-law namely Mr.Shyam Lal.*
>
> *(7) Apparently, the role of the applicant-accused who was the Assistant Sales Manager with the complainant company during the relevant period is significant and graver in nature, compared to that of co-accused Sharad. Till now, the applicant is only making an averment with regard to the possibility of explaining relatively huge entries in his bank account by saying that he had actually borrowed those amounts from his relatives and friends. No such tangible explanation is actually forthcoming. The applicant-accused was previously declared proclaimed person in a case pertaining to the year 2019 and in the said case also, he could*

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> *only be recently arrested. The investigation is still pending. The co-accused persons including the prime accused Sanjay Verma, Umender Singh, Amit Kumar, Deepak Singh and Sudhir Mishra are yet to be arrested. There is prima facie satisfaction in the support of the allegations against the applicant-accused.*

(11) A perusal of the same shows that the order pertaining to Sharad Kumar Ahuja which was appended as Annexure P-8 was only an interim order and was not a final order. Apart therefrom, the petitioner being the Assistant Sales Manager was in a managerial capacity and hence in a capacity to exert pressure/threaten the distributors. Being an Assistant Sales Manager, it was incumbent upon the petitioner to work in the best interest of the Company, however, the petitioner allegedly abused the authority vested in him and worked against the interest of the Company that employed him.

(12) Having considered the submissions furnished on behalf of the respective parties and considering the conduct of the petitioner, the stage of investigation, the reasonable apprehension of prosecution about the petitioner absconding from the process of law and interfering in the process of law, the brief custody period and the fact that other co-accused of the petitioner are evading arrest, I do not deem it fit and appropriate to extend the concession of regular bail to the petitioner at this stage. The present criminal miscellaneous petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

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

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