THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved On: 12.10.2022
Date of Decision: 20.10.2022

(1) CRM-M-4227-2022 (O&M)

Anu Bansal ....Petitioner

Versus

State of Punjab ...Respondent

(2) CRM-M-999-2022 (O&M)

Kamal Kishore Bansal and another ....Petitioners

Versus

State of Punjab ...Respondent

(3) CRM-M-50437-2021 (O&M)

Sunny Bansal ....Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Dr. Anmol Rattan Sidhu, Senior Advocate, with
Mr. GPS Ghuman, Advocate and
Mr. Raghav Gulati, Advocates, for the petitioners.
(in CRM-M-4227-2022 & CRM-M-999-2022)

Mr.G.P.S. Ghuman, Advocate, and
Mr. P.S. Mann, Advocate, for the petitioner.
(In CRM-M-50437-2021)

Mr. Joginder Pal Ratra, Sr. DAG, Punjab.

Mr. K.S. Sidhu, Senior Advocate, with
Mr. P.S. Dhindsa, Advocate,
Mr. Bikramjit Aurora, Advocate and
Mr. Dushyant Sarvesh, Advocate, for the complainant.

HARNARESH SINGH GILL, J.

This order shall dispose of the above noted three petitions, arising out of one and the same FIR.

The petitioners in these petitions seek grant of anticipatory bail in case bearing FIR No.263 dated 07.10.2021 under Section 420 IPC and Sections 467, 468, 471, 120-B IPC added later on, registered at Police Station Civil Lines, Police Commissionerate Amritsar.

The complainant and the petitioners are members of a family. Manisha Bansal is the complainant. Petitioner-Anu Bansal is her sister-in-law (Devrani). Petitioner-Kamal Kishore Bansal is complainant's brother-in-law (Jeth); petitioner-Rabia Bansal is complainant's nephew's wife (daughter-in-law of Anu Bansal and Kamal Kishore Bansal), whereas petitioner-Sunny Bansal is complainant's nephew (son of Kamal Kishore Bansal).

As per the prosecution case, the complainant and Anu Bansal, were the partners in M/s Shiva Knitters, which was established in 2004. The said firm was having three Bank Accounts i.e. i) in the HDFC Bank, B.O. Naushera Amritsar; ii) in the Oriental Bank of Commerce, Branch Office Hall Bazar, Amritsar, and iii) in KarurVysa Bank, Lawrence Road, Amritsar. The said accounts used to be operated by the complainant and petitioner-Anu Bansal for the smooth running of the business of the firm. The firm was having GST No. 03AAZFS4553R1Z6. On 20.02.2020, petitioner-Anu Bansal, opened a separate Bank Account No. 01413500110007 of the said firm in Amritsar Central Cooperative Bank, Branch Chetanpura, without disclosing the said fact to the complainant.

Petitioner-Anu Bansal gave an affidavit dated 22.06.2021 to the said Bank that she was the sole owner of M/s Shiva Knitters. A total amount of Rs.8,05,73,032/- from the business earnings of M/s Shiva Knitters was deposited in the said account, out of which an amount of Rs.1,59,23,290/- was transferred in the personal Bank Accounts of petitioners Anu Bansal, Kamal Kishore Bansal, Rabia Bansal and Sunny Bansal and their relatives Gopal Kapoor and Sandhya Kapoor. Petitioner-Kamal Kishore is also accused of having opened another Bank Account of M/s Shiva Knitters in Canara Bank, Branch Court Road, Amritsar and Kamal Kishore and Rabia had signed the documents as partners of the said firm and a new GST number was also obtained. With the intervention of the parties, a family settlement was effected on 09.11.2020 and registered in the office of Sub Registrar, Amritsar on 10.12.2020, but the petitioners did not abide by the terms thereof.

Pursuant to a detailed inquiry conducted into the matter by the Deputy Commissioner of Police (Law & Order), Amritsar, the above noted FIR was registered.

Before noticing the arguments of the learned counsel for the parties, it may be noticed that vide order dated 11.05.2022 passed by this Court in CRM-M-4227-2022, the matter was relegated to the Mediation and Conciliation Centre of this Court and arrest of the petitioner was ordered to remain stayed with a further clarification that the interim protection was granted only to facilitate the mediation. However, the mediation remained unsuccessful. Similarly, in other petitions, the arrest of the petitioners was stayed.

Dr. Anmol Rattan Sidhu, learned Senior Advocate, appearing for petitioners-Anu Bansal, Kamal Kishore Bansal and Rabia Bansal, would submit that the dispute is amongst the family members; that as per Clause 16 of the Partnership Deed between the complainant and petitioner-Anu Bansal, any dispute between the parties, shall be referred to the arbitration and there was no stipulation in the said partnership deed regarding the dissolution of the partnership deed; that Vikas Bansal, husband of the complainant started embezzling the funds of the partnership firm and had got transferred an amount of Rs.1.5 crore from the account of the Firm to his personal account in the HDFC Bank with the active connivance of the Bank officials and he had also stolen two cheques and some other documents of the factory, regarding which petitioner-Anu Bansal had already filed a complaint with the police on 21.02.2020. It is further submitted that the bank account was bona-fidely opened by the petitioner and with the execution of the family settlement and its registration on 10.12.2020, the partnership firm stood automatically dissolved and, hence, registration of the very FIR is nothing, but an attempt to harass, humiliate and extract valuable consideration from the petitioners. Yet further, it is submitted that pursuant to the family settlement aforesaid, petitioner-Anu Bansal, had transferred large number of properties in the name of the complainant, whereas the complainant had only transferred two properties in her name.

It is further argued by the learned Senior Counsel that the police has registered the FIR without verifying the facts with regard to the unsecured loan provided by petitioner-Anu Bansal to the partnership firm and that the said loan having duly been reflected in the books of accounts and reflected in the Income Tax Returns, clearly goes to establish that the petitioner has not committed any offence. It is further submitted that amount, if any, transferred by petitioner Anu Bansal and her husband in their accounts, can very much be treated to be towards the repayment of the unsecured loan, which she had lent to the firm.

As regards the role of petitioners Kamal Kishore Bansal and Rabia Bansal, it is submitted that they are neither the partners of the said firm nor did they submit any documents before the Bank for opening the account of the firm, as pleaded by the prosecution and that any amount transferred to their accounts, was in lieu of the payment made by the said petitioners, towards the unsecured loan of the firm.

Learned counsel appearing for petitioner-Sunny Bansal, contends that any amount received in his account is also in lieu of him having extended the unsecured loan to the firm and that besides that he has no concern with the incident.

On the other hand, the learned State counsel submits that before registration of the FIR, the matter was thoroughly inquired into and all the relevant documents were sought for and the FSL report was obtained regarding the forged signatures of the complainant and that it was only thereafter, the FIR in question was registered. While referring to para No. 10 of the status report, it is submitted that during investigation, it was found that petitioner Anu Bansal had, from the bank account with the Amritsar Central Cooperative Bank, Branch Chetanpura, transferred an amount of Rs.56,63,000/- in her personal account; Rs.1,05,00,000/- in her husband's account; Rs.7,80,000/- in the account of Rabia Bansal; Rs.1,00,000/- in the account of Sunny Bansal; Rs.6,00,000/- in the account of Gopal Kapoor and Rs.3,80,290/- in the account of Sandhya Kapoor. It is, thus, submitted that the accused do not deserve the concession of anticipatory bail.

Learned Senior Counsel appearing for the complainant would submit that that there are specific allegations against the petitioners and other accused persons that they in connivance with each other have misappropriated an approximate amount of Rs. 8,00,00,000/- of the firm; that petitioner-Anu Bansal, opened a separate account by using forged and fabricated documents without the consent and knowledge of the complainant and she also submitted an affidavit in the capacity of sole proprietor of the firm, without dissolution of the firm, consent and knowledge of the complainant; that the consent letter dated 01.04.2021 (attested on 09.04.2021) presented by petitioner Anu-Bansal, which is stated to be signed by petitioner-Anu Bansal and complainant-Manisha Bansal was also found forged; that petitioners-Kamal Kishore Bansal and Rabia Bansal, also opened a new account in the name of the firm by showing themselves partners in the firm.

I have heard the learned counsel for the parties.

This Court with a view to facilitating the mediation proceedings with a hope that the parties might resolve their disputes, being family members, had stayed the arrest of the petitioners. However, as noticed above, the mediation proceedings remained unsuccessful.

The plea of the petitioners that the partnership deed contained a clause with regard to referring the dispute(s) between the parties to the arbitration, does not hold good in view of the fact that before registration of the FIR, the matter had been thoroughly inquired into by Deputy Commissioner of Police (Law & Order), Amritsar and the documents were found to have been forged and a bank account of the firm was opened by petitioner-Anu Bansal at the back of the complainant (being the other partner) and had deposited an amount of Rs.8 crore (approximately) in the said account and had transferred an amount of Rs.1,59,23,290/- in her name and in the names of the co-accused.

Still further, the plea of the petitioners that with the execution of the family settlement and its registration on 10.12.2020, the partnership deed stood automatically dissolved, also lacks merit. Once, it is the case of the complainant and even the prosecution that the family settlement was not implemented by the parties, there does not arise any question of the partnership firm, having stood automatically dissolved.

Having regard to the facts of the case, this Court is not inclined to grant bail to petitioners-Anu Bansal and Kamal Kishore Bansal. Their custodial interrogation is required as to how they had opened separate account of the Firm in the Bank without any consent and knowledge of the complainant and at her back and regarding the misappropriation of the funds of the Firm.

However, taking into consideration that the other petitioners i.e. Rubia Bansal and Sunny Bansal, are the beneficiaries of the amounts transferred to their account by petitioner-Anu Bansal, their prayer for grant of ad-interim anticipatory bail is accepted.

Accordingly, CRM-M-4227-2022 is dismissed. CRM-M-999-2022 is dismissed qua Kamal Kishore Bansal. However, the remaining petitioners i.e. Rabia Bansal in CRM-M-999-2022 and Sunny Bansal in CRM-M-50437-2021, are hereby directed to join the investigation and on their doing so, they shall be released on interim bail to the satisfaction of Investigating Officer/Arresting Officer subject to the conditions as envisaged in Section 438(2) of the Code of Criminal Procedure.

However, anticipatory bail, granted while exercising the judicial discretion, should not operate as an inroad into the statutory investigational power of the Police.

Adjourned to 16.01.2023.

20.10.2022 **(HARNARESH SINGH GILL)**
ds **JUDGE**

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