

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

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**CRM-M-4895-2022 (O&M)
Date of decision: 04.05.2022**

UMESH BHASIN AND ANR

....Petitioner(s)

Versus

UT OF CHANDIGARH

...Respondent(s)

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

Present : Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Aggarwal, Advocate
for the petitioners.

Mr. C.S. Bakshi, Addl. PP UT Chandigarh.

Mr. Prabhat Kumar and Ms. Harshita Kalra, Advocates
for the complainant.

VINOD S. BHARDWAJ. J. (ORAL)

Prayer in this petition filed under Section 438 of the Code of Criminal Procedure is for grant of anticipatory bail to the petitioners in case FIR No.003 dated 07.01.2022 under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860, registered at Police Station Mauli Jagran, Chandigarh.

Learned counsel for the petitioner *inter alia* contends that pursuant to the order dated 07.02.2022 passed by this Court, the petitioners have joined investigation and are no longer required for investigation of the case. He reiterates the submissions noticed by this Court in its order dated 07.02.2022 to contend that in the ongoing proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, the pleadings clearly support that there was no outstanding liability against the said invoices.

Learned counsel for the respondent-UT Chandigarh on instructions from SI Harbans Singh does not dispute the fact that the petitioners have joined

the investigation, however, he submits that certain invoices have not been produced by the petitioners as they have urged that on account of fire in their office, the original of the said invoices are not available with them. He however does not dispute the fact that the verification with regard to the genuineness of the said invoices can always be done from secondary sources and as such the failure of the petitioners to submit the said invoices *ipso facto* may not necessitate their custodial interrogation.

Learned counsel for the complainant has pointed out that as a matter of fact there was a replacement of the old cheques and the liability in question had not been discharged. Resultantly, the entire amount is still due and a wrong averment has been made by the counsel for the petitioners before this Court on 07.02.2022.

I have considered the submissions advanced by the counsel for the complainant.

Learned counsel for the complainant has not controverted the fact that the stand of the complainant as taken in the arbitration proceedings has been rightly extracted and relied upon by the counsel for the petitioners. In the said relevant paragraphs of the response so filed, there is no such mention that there was no discharge of the liability and that only a replacement of the old cheques by the new cheques had been given. It is also not controverted by him that the arbitration proceedings are still continuing and that mere failure on the part of the petitioners to join arbitration proceedings does not *ipso facto* amount to denial of any liability by the petitioners, if any. It is also evident that no such circumstances have been pointed out as would indicate that the custodial interrogation would be imperative by referring to the nature of the offence, the manner in which the offence is alleged to have been committed or even that in the event of concession

of anticipatory bail being granted or confirmed in favour of the petitioners, they are likely to tamper with the prosecution case or abscond from the process of law. Further, it is also not in dispute that the entire case of the prosecution is based upon documentary evidence that are already available with the prosecution and the validity and genuineness of the explanation, if any, furnished by the petitioners can always be verified or be confronted.

In view of the above, I do not find any valid ground for denial of confirmation of the interim bail already granted to the petitioners.

The Hon'ble Supreme Court has already held in the matter of **Siddharth Vs. State of Uttar Pradesh & Another (2022) 1 SCC 676** that the power of arrest is distinct from the need of arrest. In an event when the Police seeks a custodial detention, it has to make out an affirmative case justifying need for such custodial detention.

In view of law laid down by the Hon'ble Supreme Court and noticing the fact referred to above, the interim order dated 07.02.2022 is made absolute.

However, if required, the petitioners shall continue to join investigation as and when required to do so and shall abide by the terms and conditions, as laid down under Section 438(2) CrPC.

(VINOD S. BHARDWAJ)
JUDGE

May 04, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>