IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5355-2022 (O&M)
Date of decision: 11.02.2022

Kulbir Singh and another

... Petitioners

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. S.P.S. Chakkal, Advocate
for the complainant.

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ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of anticipatory bail in FIR No.153 dated 18.12.2021 under Sections 420, 465, 467, 468, 471, 120-B of the Indial Penal Code (for short 'IPC'), registered at Police Station City Kurali, District SAS Nagar (Mohali).

Learned counsel for the petitioners submits that at the first instance, FIR No.101 dated 18.08.2020 under Sections 420, 406, 506 IPC was registered at Police Station City-2, Abohar, District Fazilka with the allegations that the complainant and petitioner No.1 are doing the liquor business and an amount of Rs.5.00 lacs was transferred in the account of petitioner No.1 and again Rs.3.50 lacs were transferred on two different dates. It is further stated that on subsequent stages, some more amount was transferred in the name of petitioner No.1. It is also stated that due to lockdown in March, 2020, no new liquor vends were auctioned and the Govt. had given approval to continue with old liquor vends, at that time, the complainant invested Rs.52.00 lacs for the said business.

Learned counsel for the petitioners further submits that though petitioner No.1 Kulbir Singh filed anticipatory bail in FIR No.101, in which interim relief was granted, however, concerned DSP made recommendation for cancellation of FIR, which was submitted before the Illaqa Magistrate and it was sent back for re-investigation and again second cancellation report is prepared and the same is pending approval. It is also submitted that first FIR was registered at Fazilka by giving address of the complainant of Fazilka and now the second FIR has been registered at Kurali, by giving his address of Ludhiana, with the allegations that he is doing the business of liquor vend (Theka). In the year 2019, the complainant contributed 50% share in the liquor vend of Kulbir Singh, Kurali Zone-II. On 26.03.2019, he made payment of Rs.5 lacs through RTGS to petitioner No.1 Kulbir Singh. On 13.12.2019, petitioner No.1 demanded Rs.20 lacs for his urgent need and the same was deposited in cash by the complainant in his account No.9190200059694402 of Axis Bank, Branch Dugri Road, Ludhiana. It is further stated that after two hours, petitioner

No.1 returned the said amount through RTGS. On 24.01.2020, a written deed had been executed between them. On 31.01.2020, Punjab Government came with a policy that the liquor vend will remain with the same person for the next year and on the same night, at about 07:30 pm, petitioner No.1 sent the said policy to the complainant through Whatsapp. It is also stated that they agreed to continue the same business on the same conditions. On 05.03.2020, complainant sent Rs.20.00 lacs to petitioner No.1 through RTGS. Thereafter, on 21.03.2020, the complainant also paid Rs.12.00 lacs and Rs.10.00 lacs (total Rs.22.00 lacs) to the Excise Department through Demand Draft in the name of AETC, Mohali being the partner of the said firm. Unfortunately, on 23.03.2020, lockdown was imposed and petitioner No.1 stopped giving account details of the firm to the complainant and also started creating hurdle on entering in the office by the complainant. The complainant filed a civil suit in the Court at Kharar and in the said suit, petitioner No.1 filed the reply and along with reply, he also produced the self-attested photocopy of one forged retirement deed dated 01.06.2020, allegedly to be executed by the complainant and his wife Aarti. It is further stated in the FIR that signatures of the complainant and his wife Aarti Sood, on the each of page of said retirement deed, were forged. It is further stated that there is no signature of second party i.e. Kulbir Singh (petitioner No.1) on the said document. Neither the complainant executed/scribed any such retirement deed nor he and his wife had signed the same. It is also stated that six pages of the said document are totally forged and fabricated and the same were prepared by petitioner No.1 either with the scanned signatures or by any other technique, with an intention to cheat and misuse the share and profit belonging to the complainant.

Learned counsel has further argued that the basis of registration of the present FIR is the written statement filed by petitioner No.1 in a civil suit filed by the complainant at Kharar, praying for a decree of permanent injunction restraining the defendants-petitioners or his agents from interfering or dispossessing him or not to stop him from doing day to day business of liquor vends to the extent of his share, as per the investment of the plaintiff-complainant. It is also submitted that petitioner No.1 has though given all the details of making back the payment to the complainant to the tune of Rs.23.50 lacs on three dates and again about Rs.10.00 lacs for the purchase of Toyoto car. It is next submitted that since petitioner No.1 made a specific averment in para No.8 of the written statement that in pursuance of the partnership firm, which came in existence on 28.01.2020 between petitioner No.1 and the complainant, a loan of Rs.50.00 lacs was availed and the complainant-plaintiff was sole authorized person to operate the said bank account and by virtue of the same, he had withdrawn huge amount in malafide manner. It is further submitted that after few months, petitioner No.1 was sent a retirement deed, allegedly signed by the complainant and his wife, for his signatures. Learned counsel has relied upon the said retirement-cum-admission deed dated 01.06.2020, to submit that the same has been prepared and sent to petitioner No.1 through Whatsapp of an officer of the Punjab Police, who even threatened him to sign it and part away from the business.

It is further argued on behalf of the petitioners that in the FIR, there are allegations that signatures of the complainant or his wife are forged, as per opinion given by private handwriting expert. It is also submitted that the civil suit is still pending, in which the primary dispute is regarding rendition of account and running of business and there is no finding recorded by the Civil Court about any forgery in the retirement-cum-admission deed, in which petitioner No.1 is to retire and wife of the complainant is to enter in the business.

Learned counsel has referred to the partnership deed dated 28.01.2020, to submit that in the entire deed, there is no reference to any liquor vend, which was allotted to petitioner No.1 in March, 2019 on payment of approximately Rs.6.61 crores and the purpose of this partnership deed, which came in existence on 28.01.2020, was to take fresh liquor vend at Ludhiana and in Clause 5 of this partnership deed, it is stated that the partnership will be continued to be carried on at Ludhiana or any other place. It is submitted that 50% partnership deed between petitioner No.1 and the complainant was only for the purpose of acquiring future business for the next financial year commencing from 01.04.2020, however, due to lockdown, no fresh liquor vend could be allotted, therefore, there was no business in pursuance of this partnership deed. It is further submitted that now in order to rope in the petitioners, the complainant has made up a story that this partnership deed was, in fact, meant for operating the business of liquor vend, which was allotted to petitioner No.1 at Kharar in March, 2019 for a period of 01 year and since petitioner No.1 has withdrawn the loan amount of Rs.50.00 lacs through the bank account, which is solely operated by the complainant, therefore, second FIR has been registered by making a ground that it is petitioner No.1, who set up the retirement-cum-admission deed, whereas he never set up and signed the same, allegedly signed by the complainant and his wife.

Learned State counsel, assisted by learned counsel for the complainant, has, however, given the details of payment given to petitioner No.1 Kulbir Singh through RTGS.

In reply to a Court query, who is operator of the bank account, learned counsel for the complainant could not dispute that it is the complainant alone, who is operating the bank account, which is relating to the loan amount of the firm, where Rs.50.00 lacs were disbursed by the bank.

Learned counsel for the complainant also could not dispute that in the partnership deed dated 28.01.2020, there is no clause that it is relating to the liquor vend, which was allotted to petitioner No.1 in March, 2019 on payment of Rs.6.61 crores (approx.), as even if it is to be presumed that this was meant for said liquor vend, when this partnership came in existence, only two months were left till 31.03.2020, when the period of the liquor vend was to expire.

In reply, learned counsel for the petitioners has submitted that it is a civil dispute and no interim injunction has been granted in favour of the complainant regarding the partnership deed.

After hearing learned counsel for the parties and looking into the allegations and counter-allegations and also in view of the fact that first FIR, got registered by the complainant at Fazilka, was recommended to be cancelled, though it is still pending for approval, however, considering the fact that the complainant himself filed a civil suit, in which no interim injunction has been granted and perusal of the same shows that it is a money dispute between petitioner No.1 and the complainant and going through the contents of the partnership deed, which does not reflect that it was with regard to liquor vend, which was allotted to petitioner No.1 in Kurali on payment of Rs.6.61 crores (approx.) for the period 01.04.2019 to 31.03.2020, I find that it is a fit case, where concession of anticipatory bail can be granted to the petitioners.

Accordingly, this petition is allowed and the petitioners are granted the concession of anticipatory bail subject to the conditions envisaged under Section 438 (2) Cr.P.C.

However, it will be open for the Investigating Officer to issue a notice in writing to the petitioners to join them in the investigation.

[ARVIND SINGH SANGWAN]
JUDGE

11.02.2022
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No