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

CRM-M-5372-2022

Date of decision : 09.02.2022

Sumit Duhan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Aman Pal, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.498 dated 14.12.2021 registered under Sections 380, 467, 468, 471 of the Indian Penal Code, 1860 at Police Station Sector-5, Panchkula, District Panchkula.

FIR, in the present case, has been registered by Santosh Ahuja, who had alleged that she had made several complaints against the present petitioner and Azad Duhan and the present petitioner had stolen cheque book No.732092 from the office of her son namely Aman Ahuja, as the petitioner and the said Aman Ahuja were on friendly terms and thereafter, the petitioner had misused the said cheque book by filling up

cheque No.732092 for an amount of Rs.2,90,00,000/-and had committed fraud. It is further alleged in the FIR that the petitioner had prepared a fake agreement to sell with respect to House/Kothi No.21, Sector-10, Panchkula by forging signatures of the complainant and regarding which, an FIR No.303 dated 03.06.2020 had already been registered. On the basis of the said primary allegations, the present FIR was registered.

Learned counsel for the petitioner has submitted that in the present case, the present petitioner and son of the complainant namely Aman Ahuja had a friendly relationship and on 17.12.2015, son of the complainant had requested the petitioner to buy a House/Kothi No.21, Sector-10, Panchkula, which was in the name of Santosh Ahuja (complainant) and the price of the said house was settled at Rs.2,90,00,000/-. It is further submitted that the petitioner alongwith his friends i.e. Vicky, Jitender and Naresh had jointly made the payment with respect to the said house. It is contended that when the complainant and her son had not executed the sale deed in favour of the petitioner and had not returned the said amount to him, the petitioner had moved a complaint on 11.12.2019 in the office of DCP, Panchkula and subsequent thereto, the complainant-Santosh Ahuja had issued a cheque No.732092 for an amount of Rs.2,90,00,000/-. It is further contended that when the said cheque was dishonoured on 21.03.2020, the petitioner had moved a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) against the said Santosh Ahuja, in which notice has been issued. It is argued that on account of the

influence which the complainant's family has, FIR No.303 dated 03.06.2020 was registered by the complainant herself. The said FIR has been annexed as Annexure P-3 with the present petition. It has been argued that perusal of the said FIR would show that the allegations levelled therein, with respect to preparation of a false agreement to sell of the house in question, are similar to the allegations which have been made in the present FIR. It is further highlighted that in the said FIR No.303 (Annexure P-3), it was stated by the complainant that her son had taken a loan of Rs.50,00,000/- from the present petitioner and her son had demanded back the blank documents/cheques etc. which had been given by her son to Sumit (present petitioner). It is submitted that perusal of the same would show that there were financial dealings between the son of the complainant and petitioner and the cheques had also been handed over. However, the allegations in the present FIR with respect to the said incident are contrary to the allegations made in the first FIR. It is contended that the petitioner had applied for regular bail in the said case (FIR No.303) and the Coordinate Bench of this Court, on 11.09.2020, was pleased to grant regular bail to the petitioner. A perusal of the said order would show that during the course of hearing, it was argued by the complainant that although, six cheques had been handed over but one more cheque amounting to Rs.2,90,00,000/- was still in possession of the petitioner and the same had not been handed over.

Learned counsel for the petitioner has highlighted the fact that from the abovesaid arguments raised on 11.09.2020 before the

Coordinate Bench of this Court, it is apparent that the complainant was aware about the fact that there is one more cheque amounting to Rs.2,90,00,000/- and thus, the allegations levelled in the present FIR to the effect that the said cheque has been forged and the registration of the fresh FIR, are only to further harass the petitioner who has been granted the concession of regular bail by the Coordinate Bench of this Court on 11.09.2020. It is submitted that with respect to the complaint, on the basis of which the second FIR was registered, an opinion was taken from the Assistant District Attorney (for short "ADA"), who had stated that since FIR No.303 had already been registered, thus, registration of second FIR is not permissible with respect to the same cause of action. It is pointed out that the registration of the fresh FIR is on account of the influence exercised by the complainant party, which fact is apparent from Annexure P-10. It has been submitted that the registration of the present FIR is in violation of the law laid down by the Hon'ble the Supreme Court in **judgment dated 12.07.2001 titled as T.T. Antony Vs. State of Kerala and others**. It is submitted that the petitioner has already filed a complaint under Section 138 of the Act of 1881 with respect to the cheque of an amount of Rs.2,90,00,000/- and it would be open to the complainant to raise all the pleas in his defence in the said proceedings with respect to the said cheque. It is further submitted that the present FIR has been got registered so as to pressurize the petitioner for withdrawing the said complaint filed under Section 138 of the Act of 1881. It is contended that at any rate, the entire transaction is based on the

documentary evidence and thus, custodial interrogation of the petitioner is not required. It is further pointed out that even the Additional Sessions Judge, Panchkula, while considering the anticipatory bail of the petitioner had, in para 7 of the order dated 25.01.2022, noted the said facts but however, without even dealing with the said arguments, had passed a cryptic order and dismissed the anticipatory bail application of the petitioner.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of anticipatory bail to the petitioner and has submitted that as per the allegations levelled in the present FIR, it has been stated by the complainant that the present petitioner had stolen the cheque book as he was on friendly terms with her son namely Aman Ahuja and as per further allegations in the FIR, the said cheque had been misused by the petitioner.

This Court has heard the learned counsel for the parties and has perused the record.

It is not in dispute that prior to the registration of the FIR No.303 dated 03.06.2020 (Annexure P-3), the petitioner had filed a complaint for dishonour of cheque No.732092 for an amount of Rs.2,90,00,000/-, which was stated to have been dishonoured on 21.03.2020. The said complaint was filed by the present petitioner against

the complainant-Santosh Ahuja in which notice has been issued. Instead of defending herself in the said complaint and leading her evidence in the same, the complainant had got FIR No.303 dated 03.06.2020 (Annexure P-3) registered against the petitioner by making the allegations that an agreement to sell with respect to House/Kothi No.21, Sector 10, Panchkula had been forged by the present petitioner. The said allegations are the same allegations as are levelled in the present FIR. Further, a perusal of FIR No.303 (Annexure P-3) would show that there were financial transactions between son of the complainant and petitioner and allegations have been made to the effect that son of the complainant had taken a loan of Rs.50,00,000/- from the petitioner and the said amount was stated to have been repaid and that when the son of the complainant had demanded back the blank documents/cheques etc. from the petitioner, the petitioner had filed a case against the complainant. From the above allegations, it is clear that even as per the case of the complainant, there were the cheques in possession of the petitioner which had apparently been given in advance, on account of the loan of Rs.50,00,000/-. The said allegations in the FIR No.303 are contrary to the allegations which have been made in the present FIR inasmuch as in the present FIR, it has been stated by the complainant that petitioner had stolen the cheque book from the office of her son namely Aman Ahuja. In the present FIR, nothing has been stated about loan of Rs.50,00,000/- which had been taken by the son of the complainant from the petitioner. It is not in dispute that in FIR No.303, petitioner has been granted regular bail by the Coordinate Bench

of this Court. Order dated 11.09.2020, granting bail to the petitioner by the Coordinate Bench of this Court, is reproduced hereinbelow:-

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

Petitioner seeks regular bail pending trial in FIR No.303 dated 03.06.2020, under Sections 420, 467, 468, 471 and 120-B IPC, registered at Police Station Sector 5, Panchkula, District Panchkula.

FIR came to be registered on the complaint of Smt.Santosh Ahuja. Allegations in a nutshell are that a forged and fabricated agreement to sell dated 24.03.2018 in respect of her residential house has been set up by the petitioner herein and in which the petitioner's father namely Azad Singh is one of the attesting witnesses.

On the previous date of hearing the prayer for regular bail was opposed by learned State counsel as also counsel for the complainant on the basis that there were certain relevant documents/cheques etc. which are in possession of the petitioner and which are yet to be recovered.

During the course of hearing today it has gone uncontroverted that six cheque leaves have since been handed over at the instance of the petitioner herein to the investigating agency.

Counsel for the complainant still opposes the prayer by contending that one more cheque for an amount of Rs. 2,90,00,000/- is in possession of the petitioner and which had never been issued by the complainant.

Mr.Aman Pal, counsel for the petitioner has met such objection by contending that a complaint under

Section 138 of the Negotiable Instruments Act on the strength of such cheque allegedly drawn for a sum of Rs. 2,90,00,000/- has already been initiated and in which the competent court has issued notice on 23.06.2020. It is urged that so far as such cheque is concerned it would always be open for the complainant to set up her defence in accordance with law.

That apart it would be apposite to take note that the complainant even prior to the target date for execution of the sale deed under the alleged agreement to sell, has herself sold the house to a third party and who is in possession of the house. In other words the agreement to sell dated 24.03.2018 and which is alleged to be forged and fabricated has never been acted upon.

Petitioner was arrested on 05.07.2020.

Allegations hinge on documentary evidence which are already in possession of the investigating agency.

It is not the case made out on behalf of the State or by counsel for the complainant that the benefit of bail if granted to the petitioner, he would be in a position to hamper the course of a free and fair investigation/trial.

Petitioner has already suffered incarceration over a period of more than two months.

Without making any observation on merits the petitioner is held entitled to benefit of bail.

Petitioner be enlarged on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate, Panchkula.

Disposed of ”

A perusal of the said order would show that counsel for the complainant had argued that one more cheque amounting to

Rs.2,90,00,000/- was in possession of the petitioner. It is, thus, apparent that as on 11.09.2020, the complainant was aware about the said cheque. Even after considering the said aspect, as well as the aspect that a complaint under Section 138 of the Act of 1881 has been filed, the Coordinate Bench was pleased to grant bail to the petitioner. A perusal of the opinion (Annexure P-4) would show that with respect to the complaint, on the basis of which, the present FIR has been registered, it had been replied by the ADA that a second FIR could not be registered, in view of the law settled by the Hon'ble Supreme Court. Relevant portion of the said opinion is reproduced hereinbelow:-

“However, it is also observed that the earlier case registered against Sumit Duhan is regarding alleged forgery of sale deed of house of the complainant for sale consideration of Rs.2.90 crore and FiR was lodged on 03.06.2020 in this matter. The alleged cheque is also for an amount of Rs.2.90 Crore and issued on 15.03.2020, so there may be connection of the said cheque with the case already under investigation. Therefore. keeping in view the law settled by the Hon'ble Apex Court the lodgment of two FIRs is not permissible against the same accused in connection with the same cause of action and the same incident. As such, the matter may also be inquired with this view point before registering FIR in the present case. Submitted for & n a please.

Sd/- (Rajbir Singh), 31.08.2020

A.D.A.”

Further, a perusal of the opinion at page 42 of the paper book, would show that opinion given by the ADA was approved by the

Commissioner of Police, Panchkula. In spite of the above, the present FIR No.498 dated 14.12.2021 (Annexure P-2) had been got registered by the complainant. The argument of the learned counsel for the petitioner is that the said FIR has been registered on account of influence which the complainant has and for the same, reference has been made to the statement of Satish Ahuja who is husband of the complainant (Annexure P-10).

Be that as it may, at any rate, it is the present petitioner who had first filed a complaint under Section 138 of the Act of 1881. The issue as to whether cheque No.732092 has been duly executed or not is a matter which is pending consideration in the said proceedings under Section 138 of the Act of 1881. The case is based on the documentary evidence and the complainant would have all the opportunity to lead or defend in the said case under Section 138 of the Act of 1881. Whether the second FIR could have been registered in the present case, in view of judgment passed by the Hon'ble Supreme Court in **T.T. Antony's** case (Supra) and also in view of the opinion, which had been given by the ADA and thereafter approved by the Commissioner of Police, would also be an arguable point in favour of the petitioner.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and in the event of arrest, the petitioner is granted the concession of anticipatory bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C.

However, the petitioner shall join the investigation as and when called upon to do so.

It is made clear, in case, the petitioner fails to join the investigation or does not cooperate with the investigation, then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an 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 application.

09.02.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No