

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

105+210

CRM-M-6388-2022 (O&M)

Date of decision: 31.03.2022

BRIJ MOHAN KHARBANA

....Petitioner

Versus

STATE OF HARYANA

..Respondent

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

Present : Mr. Raj Kumar Gupta, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional A.G. Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

CRM-11201-2022

The present application filed on 22.03.2022 for pre-ponement of the main case.

Learned counsel for the applicant-petitioner wishes to withdraw the said application.

Dismissed as withdrawn.

CRM-M-6388-2022

1. The instant petition has been filed under Section 439 CrPC for grant of regular bail to the petitioner in case FIR No.384 dated 30.10.2021 under Sections 120-B, 420, 467, 468 and 471 of the IPC (Section 201 IPC added later on) registered at Police Station Arya Nagar, District Rohtak.

2. Learned counsel for the petitioner contends that the petitioner has been nominated as an accused on the basis of disclosure statement made by co-accused Deepak. It is argued that as per the final

report filed by the Investigating Agency, the cheques in question were allegedly cloned by two person namely Gaurav and Dharmender from whom the cheque in question was transferred in favour of the petitioner-Brij Mohan, Suresh Tyagi and Parveen Kumar and thereafter are alleged to have transferred multiple hands to be finally presented by Joginder Balhara for encashment. It is submitted that the co-accused Parveen Kumar who is identically placed as the petitioner has already been granted concession of regular bail by the Additional Sessions Judge, Rohtak vide order dated 25.03.2022. It is undisputed that upon the bank officials getting suspicious and inquiry being made, the amount in question was never credited to the said account. Learned counsel for the petitioner also contends that no recovery has been effected from the petitioner and at best the case as may be made out against the petitioner is that of an attempt at commission of the offence. It is further urged that even the said aspect would be subject matter of trial inasmuch as the possibility of the petitioner dealing with said cheque under a bona fide impression cannot be ruled out. It is also pointed out even though the final report has been filed on December 2021, however, the FSL report has not yet been obtained by the Police. Charge has also not been framed. It is a Magisterial trial and shall take long time to conclude.

3. Mr. Ashish Yadav, Additional A.G. Haryana controverts the averments raised by the petitioner by submitting that the FSL report has already been obtained and upon conclusion of the investigation, the participation of the petitioner was found to be made out. Accordingly, they were nominated as an accused in the final report. He alleges that

the petitioner is a part of a gang which is involved in cloning of cheques and duping people of their hard-earned money. He, however, could not dispute the fact that there is no other case that has been registered against the petitioner. Besides, it is not controverted that the cloning of the cheque is primarily alleged to have been committed by Gaurav and Dharmendra. Further, it is also not disputed that the petitioner is in custody since 12th December, 2021 and charges have not been framed so far.

4. I have considered the arguments advanced by the counsel for the parties.

5. Taking into account the fact that the petitioner has been in custody since 12.12.2021 and is not required for the purposes of investigation since the final report under Section 173 CrPC already stands submitted. The petitioner is arraigned as accused on the disclosure made by the co-accused. No recovery has been effected from the petitioner. The case involves Magisterial trial and the same is yet to commence. Further, the presentation of the cheque by Joginder Balhara did not fructify as no amount in question was transferred as a result of the adventure undertaken by Joginder Balhara. In view of the above, I deem it appropriate to enlarge the petitioner on bail.

6. Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of Trial Court/Duty Magistrate, concerned.

7. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner

directly or indirectly.

8. The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of available material.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 31, 2022
vishal sharma

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