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

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**CRM-M-10522-2022
Date of decision: 10.05.2022**

HARVINDER SINGH ....Petitioner

Versus

STATE OF U.T. CHANDIGARH ...Respondent

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

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Present : Mr. Pradeep Sharma, Advocate
for the petitioner.

Mr. Akashdeep Singh, APP, U.T. Chandigarh.

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VINOD S. BHARDWAJ. J. (ORAL)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 by the petitioner for seeking concession of regular bail in case bearing FIR No. 298 dated 18.08.2017 registered under Sections 406 and 420 of the Indian Penal Code, 1860 at Police Station, South Sector-34, Chandigarh.

2. The case of the prosecution has been instituted on complaint of one Sunil Malhotra who is a Manager of the Punjab National Bank, Branch Officer, Sector-45, Chandigarh and is alleged that the petitioner had availed of a loan from the Bank and that the debt facility was initially for a sum of Rs.65 lakhs which was enhanced to Rs.75 lakhs sanctioned to the sole proprietorship firm namely M/s Best Trading Company owned by the petitioner. It is contended that all the necessary loan/security guaranteed documents were executed on 14.06.2013 at the Punjab National Bank, Branch Office, Burail, Sector-

45, Chandigarh. The recovery/re-payment of the loan was guaranteed/secured by the petitioner. It is also alleged that the future stocks of the papers, finished good, consumables, stores and spares etc. were also hypothecated to the complainant bank. It is contended that the account of the petitioner was declared as NPS on 28.07.2015 with a balance of Rs. 61.07 lakhs approximately in cash credit hypothecation and Rs. 20.61 lakhs approximately in credit book debts. Resultantly, the premises of the petitioner were claimed to have been visited by the bank officials on 21.11.2015 and were found to be closed. It is alleged that the petitioner had sold out all the hypothecated goods/stocks and had left the place without any forwarded address. There was thus a clandestine removal of the hypothecated stocks and conversion of the sale proceeds for his own benefit.

3. Learned counsel appearing on behalf of the petitioner has contended that the true and correct facts have not been disclosed in its entirety by the respondent while getting the FIR in question registered on 18.08.2017 which is after a period of nearly 02 years since the alleged disclosure of the information to the officials of the bank itself. He further points out that the proceedings before the Debt Recovery Tribunal has been initiated by the respondent-Bank by means of filing OA No. 3091 of 2017 and a recovery certificate for a total sum of Rs. 85,92,948/- have been issued in favour of the bank. The said loan amount stood covered against the mortgage property of the petitioner. It is contended that the Debt Recovery Tribunal has specifically recorded in its order dated 20.12.2018 passed in OA No. 3091 of 2017 that the bank had not led any evidence regarding by diversion of funds and has

not been even to show any evidence that there was any misutilization of the same. It is further argued that the dispute in question relates to the proceedings under the SARFAESI Act and recovery of the loan advanced. The registration of criminal case is thus an abuse of process of law.

4. Per contra, Mr. Akashdeep Singh, Additional Public Prosecutor appears on behalf of the U.T. Chandigarh has alleged that the property in question was not in possession of the petitioner and that the Bank was induced into advancing the loan on an assumption that the petitioner is in possession of the property. It is pointed out that the investigation in the case is complete and the charges have been framed. It is however not disputed that no evidence has commenced so far and that the petitioner has undergone an actual custody of 07 months and 24 days and it is also not disputed that the petitioner does not suffer from any criminal atecedents and is not involved in any other case.

5. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their able assistance.

6. The afore-mentioned facts have also been taken note of along with the fact that the dispute is regarding the recovery of loan and documents so furnished by the petitioner, for seeking the benefit of such loan. The proceedings for recovery of the same had already been initiated by the Punjab National Bank before the DRT-II, Chandigarh and appropriate recovery in this regard has also been issued in the year 2017/2018. The order of the Debt Recovery Tribunal-II, Chandigarh suggests that there is no embezzlement/diversion of the funds so

advanced. Moreover, it is also not disputed that there was no dispute pertaining to the title of the petitioner with respect to the property mortgage.

7. Taking into consideration, the circumstances noticed above as also the period of custody as well as stage of trial, I deem it appropriate to enlarge the petitioner on bail to the satisfaction of the trial Court.

8. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

9. 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.

10. 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.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 10, 2022
vishal sharma

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