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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(1)

CRM-M No.9885 of 2022

Date of Decision: 10.10.2022

Anita

...Petitioner

Versus

State of Haryana

...Respondent

(2)

CRM-M No.11187 of 2022

Suresh Kashyap

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present :- Mr. Manjeet Singh, Advocate
for both the petitioners.

Ms. Ambika Sood, Addl. A.G., Haryana
for the respondent-State.

Mr. Arjun Kundra, Advocate for
Mr. Sachin Saini, Advocate
for the complainant.

MEENAKSHI I. MEHTA, J. (Oral)

Both these petitions are being taken up together for discussion
and adjudication as the petitioners herein seek the relief of anticipatory/pre-
arrest bail in the same criminal case arisen out of the FIR bearing No.37
dated 02.02.2022 registered at Police Station Sector 14, Gurugram, under

Sections 406 and 120-B IPC.

2. Shorn and short of unnecessary details, the allegations as levelled by the complainant Company against the petitioners in the subject FIR, are that it (complainant), along-with its sister Concern named and styled as Cars24, deals in the sale and purchase of the used Cars and gives such vehicles to its authorised dealers by way of open auction, on revolving credit for a period of 60 days. Petitioner Suresh Kashyap was its registered dealer and petitioner Anita was the co-borrower and they hatched a conspiracy and accordingly, committed criminal breach of trust in respect of 44 vehicles entrusted to them and sold the same without paying the contractual amount to it, despite the lapse of the said period of 60 days.

3. Reply in CRM-M No.9885 and the status-report in CRM-M No.11187 of 2022 (by way of the affidavits of the Assistant Commissioner of Police, Old, Gurugram) on behalf of the respondent-State, have been submitted in the Court today and the same are taken on the record.

3. It is pertinent to mention here that vide the orders dated 09.03.2022 and 16.03.2022 passed by the Co-ordinate Bench in CRM-M Nos.9885 and 11187 of 2022 respectively, the petitioners were extended the relief of interim bail with the direction to join in the investigation but on 22.08.2022, learned State counsel had apprised the Court that though the petitioners had joined in the investigation but they had not co-operated in the same and then, on the request as made by their learned counsel, they were afforded one more opportunity to join in the investigation.

4. Today also, learned State counsel, on the instructions from

ASI Neeraj from the above-said Police Station, informs the Court that though, the petitioners did join in the investigation in compliance of the said order passed by this Court on 22.08.2022 but they have, again, not co-operated the Investigating Agency. The afore-said fact also finds mention in paras No.4 and 6 of the preliminary submissions in the Reply in CRM-M No.9885 and the Status-report in CRM-M No.11187 of 2022 respectively and it has also been further deposed therein that the custodial interrogation of the petitioners is required for just and fair investigation of the case.

5. I have heard learned counsel for the petitioners as well as learned State counsel (assisted by learned counsel for the complainant) in both the petitions and have also perused the file carefully.

6. Learned counsel for the petitioners contends that from the allegations as levelled in the FIR itself, no offence under Section 406 IPC is made out against the petitioners in the present case because the dispute between them and the complainant is civil in nature and the arbitration proceedings have also been initiated by the complainant for the same and the amount of Rs.70 lac has already been paid by petitioner Suresh Kashyap to the complainant-Company and in these circumstances, the petitioners deserve the relief as prayed for in the instant petitions. To buttress his contentions, he places reliance upon **Kailash Verma vs. Punjab State Civil Supplies Corporation and another, 2005(1) R.C.R. (Criminal) 727** and **Punjab State Civil Supplies Corporation (PUNSUP) vs. Deepak Kumar and another 2007(2) R.C.R. (Criminal) 550.**

7. Per-contra, learned State counsel argues that the petitioners

have duped the complainant-Company of 46 Cars worth Rs.1,61,60,525/- and keeping in view the nature of the offence committed by them, i.e the petitioners, these petitions be dismissed.

8. The contentions regarding the payment of the afore-said amount by petitioner Suresh Kashyap to the complainant-Company and the pendency of the arbitration proceedings do not, in themselves, suffice at all at this stage, to come to the conclusion that no offence under Section 406 IPC is made out in the present case and even otherwise, this Court is not supposed to conduct any mini trial and to ascertain/decide or make any observations qua these aspects while dealing with these bail petitions and rather, the same can and shall be looked into and adjudicated upon by the trial Court at the appropriate stage during the course of the trial.

9. The observations made by the Apex Court in **Kailash Verma's case (supra)** and the Division Bench of this Court in **Punjab State Civil Supplies Corporation's case (supra)**, are of no avail to the petitioners because in **Kailash Verma's case (supra)**, the observations were made while deciding the matter regarding the discharge of the appellant-accused in the criminal case and in **Punjab State Civil Supplies Corporation's case (supra)**, the Division Bench of this Court had dealt with the application as moved for seeking leave to appeal against the acquittal of the respondent-accused whereas in the case in hand, the investigation is still at the nascent stage and the Challan is yet to be presented in the Court.

10. Keeping in view the above-discussed facts and circumstances as well as the gravity of the offence as alleged to have been committed by

the petitioners, coupled with the afore-referred factum qua their non-cooperation with the Investigating Agency, this Court is of the considered opinion that they (petitioners) do not deserve the relief of anticipatory/pre-arrest bail. Resultantly, both the petitions in hand stand dismissed accordingly.

11. However, it is further clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the case.

10.10.2022
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(MEENAKSHI I. MEHTA)
JUDGE

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