IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-12537-2022 (O&M)
Date of Decision:- 25.4.2022

Shard Sharma … Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. L.M. Gulati, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab,
assisted by ASI Amarjit Singh.

Mr. Bikramjit Aroura, Advocate for the complainant.

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GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of anticipatory bail in a case registered against him vide FIR No.22 dated 12.01.2022 under Sections 408, 381, 420/120B IPC at Police Station 'B' Division Amritsar, District Amritsar.

2. The FIR was lodged at the instance of Nirmal Singh, wherein he stated that he is running business of electronics under the name and style of M/s Nirmal TV Centre at Amritsar since the year 1978 and is having business transactions with various finance companies including Bajaj Fincorp, Capital Finance (now IDFC First Bank), HDFC Finance and HDB Finance and that on account of volume of work, the representatives of the said finance companies used to sit at his shop to complete formalities of financing electronics goods. It is alleged that Maninderjit Singh, an employee of Bajaj Fincorp, Varinder Singh, an employee of Capital Finance (now IDFC First Bank), Naresh Kumar Tandon, an employee of Whirlpool

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and Shard Sharma, an Accountant working in complainant's firm, connived with each other and cheated the complainant of huge amount by replacing new products with defective articles without his consent and by forging documents and by selling products without updating the particulars on the portals of the finance companies.

3. It is the case of prosecution that the *modus operandi* adopted by the accused was that after taking a meager down payment of about 5%-10% for the purpose of financing the goods, delivery challans used to be prepared by the accused in the name of their known persons, relatives etc. and the products/articles used to be taken out of the godowns without actually preparing a case of financing. It is, thus, alleged that a loss to the tune of about Rs.40 lacs was caused to the firm of the complainant.

4. The learned counsel for the petitioner has submitted that the petitioner has merely been working as an Accountant with the firm of the complainant and his duties was to maintain the record of the payments which are made and that he had duly entered and maintained the record of the down payments which had been made by customers while getting formalities of financing processed through the representatives of various finance companies i.e. Bajaj Fincorp. Capital Finance (now IDFC First Bank), HDFC Finance, HDB Finance and in case the representatives of the said finance companies had not completed all the formalities of financing such electronic goods, it is the said representatives of the companies who could be held responsible and not the petitioner. The learned counsel has further submitted that even if the statements (Annexure R-2/1) which have been annexed with the reply filed by the complainant are accepted to be correct, the petitioner, at best, can be

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attributed with some irregularities in respect of an amount of Rs. 1 lac only. It has been submitted that since the complainant himself has compromised matters with some other persons for an amount as meager as Rs.4 lacs, though he is claiming fraud of Rs.40 lacs, it is apparent that the only purpose of lodging this FIR is to extort money from persons named in FIR.

5. On the other hand, the learned State counsel, assisted by counsel for the complainant, has submitted that it is a case where a fraud of infact more than Rs.40 lacs has been committed and that the petitioner played a pivotal role in the commission of fraud by way of forging documents and preparing fake challans and making bogus entries in account of the firm.

6. The learned counsel for the complainant, while referring to the statement (Annexure R-2/1) pertaining to the petitioner Shard Sharma has submitted that the articles mentioned therein at Sr. No. 1 to 4 are the ones which the petitioner had shown to have been financed to himself whereas a number much larger had been shown to have been financed to acquaintances and relatives of accused on the basis of bogus documents and entries wherein apart from the meager down payment no other amount had been paid as instalment. It has been submitted that the articles so delivered from the shops/godown of the complainant were later sold off in open market.

7. The learned State counsel has, thus, submitted that having regard to the enormity of the offence and the intricate manner in which the same has been committed to avoid detection, the custodial interrogation of the petitioner is required so as to unearth and know the finer details of the *modus operandi* and also details of beneficiaries.

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8. I have considered rival submissions addressed before this Court.

9. A reply by way of affidavit of the Assistant Commissioner of Police (East), Amritsar City has been filed, wherein he has deposed that the Commissioner of Police, Amritsar had forwarded the complaint made by the complainant to the Additional Deputy Commissioner of Police, City-III, Amritsar for verification and to submit a detailed report. He has deposed that the matter was examined and a detailed report was submitted to the effect that the allegations levelled by the complainant against all the accused stand duly established. Some of the relevant extracts of the enquiry report, as have been reproduced in para 3 of the reply, read as follows:

> "3. xxx xxx xxx
>
> "x x x
>
> Varinder Singh involved Narinder Kumar Tandon, Maninder Singh and Sharad Sharma with him and they made a plan in connivance with each other in the year 2019-2020, according to which, by writing any bogus name and address and mobile number of any person on their own on the FI (First Information) register lying at the shop and accordingly they used to prepare a challan form of the shop and then used to write in that challan form regarding sale of any electronic product and by crediting some amount, i.e. Around 10%/20%, of the product in the challan form and FIR register, received as advance, they used to hand over that advance amount to the owner and after making the installments of the balance amount, used to show the same by filling in the challan form and register, and then conveying to the owner Nirmal Singh that regarding the balance installments they were preparing the case and were sending case to their finance company on the portal and soon the balance amount of installments will be credited in the account. On the basis of his faith in these boys, the

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complainant did not go deeply and used to deliver products from the shop/godown on the instructions of Varinder Singh and Narinder Kumar Tandon etc. or these boys used move out products from the shop on the address mentioned in their challan form filled by them on their own. During the enquiry, the persons in the list of above annexure presented by complainant Nirmal Singh were tried to join in the investigation, on which it was found that most of the names of the persons mentioned in the above challan forms and lists were bogus with fake addresses and fake/wrong mobile numbers were found mentioned, which could not be traced during the enquiry.

x x x

In Para No.6 to 13 of the above enquiry report, Varinder Singh, Narinder Kumar Tandon and Sharad Sharma have taken away electronic products from the shop of complainant Nirmal Singh at different times in different ways and by selling the same outside to the other shopkeepers and people at cheaper rates thereby committing cheating of a lot of money with the complainant Nirmal Singh, regarding which some of the records of the case of year 2019 to 2020 has been presented by complainant Nirmal Singh. During the enquiry, those persons, who had purchased the products have been called and heard as witnesses, their relation has been found with boy Varinder Singh, out of which, from the statement of total 6 persons mentioned in Para No.10 above, it was revealed that boy Varinder Singh, used to give products to his known/friends at the time of need from the Shop Nirmal TV Center and then used to received the amounts of the given electronic products outside the shop, by visiting the houses of the customers and by visiting other places, and by filling some amount in the challan form regarding advance receipt and by handing over the same to the owner Nirmal Singh used to show the remaining amount in the challan form by making the installments and later did not send the files of those persons for finance to any company

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> through the portal, due to which owner Nirmal Singh did not get the balance amount of these products. That act was not done by Varinder Singh alone, another boy Narinder Kumar Tandon working at the shop, Maninder Singh and accountant Sharad Sharma were also involved with him, who also used to support Varinder Singh in this acts."

10. The role of the petitioner, who was working as an Accountant with the firm of the complainant, cannot be undermined by stating that he was merely maintaining record of the amounts received as an Accountant as the police during investigation has found that he was handling the work of issuing challans etc. to facilitate delivery of the articles and had forged documents and accounts for facilitating commission of offences.

11. Having regard to the fact that the matter involves a large number of transactions carried over a period of time including delivery of brand new electronic and electrical articles either by way of showing the same to have been financed or exchanged, the custodial interrogation of the petitioner would be of utmost importance to find out the exact manner of the fraud and as regards the involvement of some other accused also.

12. The petition, as such, is sans merit and is hereby dismissed.

25.4.2022 **(Gurvinder Singh Gill)**
kamal/Vimal **Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No

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