IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25129-2018
Date of Decision: 18.04.2022

Rambhagat Bhardwaj

.......Petitioner

vs.

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sunil Panwar, Advocate,
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Anand Chhibbar, Sr. Advocate with
Mr. Shikhar Sarin, Advocate,
for respondents no.2 and 3.

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AMOL RATTAN SINGH, J.

1. Vide this petition, the petitioner invokes jurisdiction of this court under the provisions of Section 439 (2) of the Cr.P.C., read with Section 482 of the said Code, thus seeking that the order passed by this court on 19.02.2018, admitting respondents no. 2 and 3 to bail, be recalled and the bail granted to them be 'cancelled'.

The matter stems from FIR No. 866, dated 06.10.2017, registered at Police Station City, Jind, alleging therein the commission of offences punishable under the provisions of Section 406/420/506 of the IPC.

2. The essence of all allegations against respondents no. 2 and 3 is that they, being Directors of the company known as M/s KTC Foods Private Limited, had allegedly usurped about Rs. 4.48 crores which were to be paid to

the firm that the petitioner is the proprietor of, known as M/s Bhardwaj & Company, which is carrying on the work of a commission agent in the Grain Market at Jind. As a background, it is stated in the FIR that the said respondents came to the shop of the petitioner in the year 2014 and wished to purchase good quality paddy, which the petitioner agreed to sell, after purchasing the same with the consent of the President of the '*Mandi*' (market) and that the said respondents (Sushil Singla and Sachin Singla), appointed the petitioner as an agent (for purchasing paddy for M/s KTC Food Private Limited).

It is further alleged in the FIR that the petitioner (the complainant in the FIR) purchased paddy worth Rs. 3.77 crores for the said company during the paddy season in the year 2014.

The said company (allegedly through respondents no. 2 and 3), paid an amount of approximately Rs. 2.27 crores on 01.04.2015 but did not pay the remaining amount, their intention from the beginning being to cheat the petitioner but with the petitioner continuing to purchase paddy on their behalf.

Eventually, the said respondents/their company did not pay approximately Rs. 4.48 crores and allegedly also issued threats to the complainant upon him demanding the amount.

3. Upon the aforesaid complaint the FIR came to be lodged. Respondents no. 2 and 3 therefore filed CRM-M-46963-2017 before this court, seeking the concession of bail under the provisions of Section 438 of the Cr.P.C., with the matter having been referred to mediation between the parties.

Thereafter, on 19.02.2019, the following order was passed by this court (in CRM-M-46963-2017).

"Pursuant to the earlier orders, the report of the learned Mediator of the Mediation and Conciliation Centre of this Court, dated 14.02.2018, is on record, annexing therewith a copy of the settlement/agreement reached between the petitioners, i.e. the accused and the complainant in the FIR, Rambhagat Bhardwaj.

Learned counsel appearing for the complainant does not dispute the factum of the compromise.

Consequently, the matter having been settled between the parties, the order dated 09.01.2018, grating interim bail to the petitioners, is made absolute.

The petition is disposed of accordingly."

4. Hence, the matter at that stage was settled in terms of the agreement reached between the parties but with this petition thereafter having been filed on 30.05.2018, and with the following order having been recorded by this court on 02.07.2018:-

"*Learned counsel for the petitioner submits that respondents no.2 and 3 have not complied with the terms of the compromise on the basis of which they were granted bail, inasmuch as, they have not paid even the first installment of Rs.45 lacs, which was to be paid on May 14, 2018.*

Notice of motion be issued to the respondents, returnable on 17.08.2018."

Along with this petition, a copy of the compromise deed dated 14.02.2018 has been annexed, a perusal of which shows that respondents no. 2 and 3 had agreed to pay the petitioner herein a total sum of Rs. 3.65 crores and with Rs. 50,00,000/- to have been transferred to the petitioner/his firm on 16.02.2018.

The remaining amount of Rs. 3.15 crores was to be paid in 7 equal quarterly installments of Rs. 45,00,000/- each, with the first such installment to be paid on or before 14.05.2018 and the remaining 6 installments to be paid every three months thereafter.

5. Respondents no. 2 and 3 seemingly having evaded service of the notice ordered to be issued by this court on 28.09.2018, non-bailable warrants were ordered to be issued to secure their presence, with the Superintendent of Police, Jind, directed to ensure execution of the said warrants by 05.10.2018.

On that date counsel had appeared for respondents no. 2 and 3 and had stated that they would appear before this court on the next day itself and therefore the non-bailable warrants 'may be kept in abeyance' subject to their appearance.

That having been ordered, and with them directed to execute fresh bail bonds in the sum of Rs. 5,00,000/- each with two sureties in the like amount in the case of each respondent, the matter thereafter kept coming up for hearing on various dates with arguments being raised on both sides, the essential argument on behalf of respondents no. 2 and 3 being that their company "is undergoing the Corporate Insolvency Resolution Process (CIRP)", with an Interim Resolution Professional having been appointed in terms of the Insolvency and Bankruptcy Code, 2016, and consequently, they were not in a position any longer to even operate their companys' bank accounts in order to pay the installments as were agreed upon with the petitioner.

6. At that stage itself, learned counsel for the petitioner had

submitted that in fact the said respondents had set up a new company by the name of M/s Watchfood Properties Private Limited in March 2018, with funds having been diverted from M/s KTC Foods Private Limited to the new company and consequently, they were only trying to evade their liability towards the petitioner by taking a 'technical plea' that was not sustainable.

7. On 05.12.2018 the following order was recorded by this court:-

> *Mr. Chibber, learned Senior Counsel appearing for respondents no.2 and 3, has drawn attention of this Court to Section 9 of the Insolvency and Bankruptcy Code, 2016, in response to Mr. Rais' contention that the private respondents in fact allowed the petition filed before the learned Company Law Tribunal (by one Ashok Kumar) to be admitted. He further submits that as a matter of fact there is no question of that contention of Mr. Rai being correct, as the private respondents had responded to the petition filed under Section 9 by Ashok Kumar and thereafter the Tribunal had admitted it and had appointed a Resolution Professional (RP).*
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> *As regards that issue, a copy of the petition filed by Ashok Kumar and a reply thereto by the respondents would need to be looked at, to also determine as to whether the reply was actually in terms of the books of account kept by them, showing any amount due to Ashok Kumar/his firm/company; and more importantly at this stage at least, in the opinion of this Court the 'private respondents' are required to answer as to why, despite the agreement entered into by them with the petitioner in the month February 2018, they did not even begin to pay any part of the installments that fell due on 15.05.2018 and 15.08.2018, each of those installments being for an*

amount of Rs.45 lac.

This Court would understand if the respondents were in dire financial strait (including their company being in such situation) and consequently they were not able to make payment to anybody at all; however, it is not disputed even by the private respondents that in the interim period up to 29.08.2018, i.e. before the petition filed by Ashok Kumar was admitted by the Tribunal, payments were made to different persons/companies/firms, without even a proportion of Rs.45 lacs having been paid to the petitioner as per the agreement, on the strength of which the private respondents obtained bail from this Court vide its order dated 19.02.2018 passed in CRM-M-46963-2017.

Consequently, adjourned to 17.12.2018.

To be taken up at 2.00 p.m.

The private respondents would place on record the documents referred to above, i.e. the petition filed by Ashok Kumar, the reply filed thereto by the private respondents, as also the documents on the basis of which that reply was filed; and would also give details of all payments made by them between February 2018 to August 29, 2018, to explain as to why not even a proportion of the payment that was agreed to be paid to the petitioner, was even attempted to be paid.

What this Court, at this stage at least, is seeing that the agreement was entered into as a compromise only to ensure that the interim bail granted to the private respondents was made absolute, with possibly no intention to honour it, because if there had been such intention, at least some payment out of Rs.45 lacs per installment, would have been attempted to be paid by the private respondents.

Naturally, the respondents would be free to rely upon any other document they wish to.

8. Thereafter, as recorded in the order dated 17.12.2018, learned senior counsel appearing for respondents no. 2 and 3 had submitted that (with the IRP having been appointed in August 2018), as regards installments that became due uptill that date, i.e. a sum of Rs. 45,00,000/- + Rs. 45,00,000/-, the said respondents would pay the petitioner the same along with interest (with the total to be thus paid being Rs. 1,10,00,000/-), uptill the 2nd week of January 2019, of which Rs. 25,00,000/- would be paid by 21.12.2018 itself.

On the aforesaid contention made, learned counsel for the petitioner had however submitted that other than M/s KTC Foods Private Limited, respondents no. 2 and 3 were also operating other companies and with the respondents having been admitted to bail on the strength of an agreement reached in February 2018, <u>in their individual capacities</u> (and not on behalf of M/s KTC Food Private Limited), there would be no reason for them to not pay the amount due to the petitioner, from any other sources of income/liquidity that they had.

Counsel for the petitioner had named 04 companies and 2 firms of which respondents no. 2 and 3 were either Directors/Proprietors/Partners.

9. The contention of learned senior counsel appearing for the said respondents had been that the debt owed by the said respondents being only on account of money due from M/s KTC Food Private Limited, the money could only be paid from the account of that company and the other companies/firms of which the said respondents may be Directors/Proprietors etc., would have no bearing on that debt.

Thereafter, as recorded on 21.12.2018, two demand drafts favouring the petitioner, for a sum of Rs. 12.5 lacs each, were produced in court but with the said respondents submitting that they would like to hand over the said amount to the petitioner only on a comprehensive settlement being reached.

Thereafter, it was recorded on 30.01.2019 that an affidavit had been filed by respondent no. 2 to the effect that the companies/firms of which he and respondent no. 3 were Directors/Proprietors/Partners, were either running in a loss or had a marginal profit of less than Rs. 50,000/-.

10. On 04.02.2019, other than counsel essentially reiterating what had been argued earlier, this court had also recorded the following:-

> xxxx xxxx xxxx xxxx xxxx
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> *"Though I agree with Mr. Rai that the amount now undertaken to be paid was actually due to the extent of Rs. 90,00,000/- (without interest) on 15.08.2018 itself, however, since an undertaking has been given to the effect that another Rs. 85,00,000/- would be paid within 10 days, adjourned to 20.02.2019.*
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> *The respondents would also file their balance sheets qua the other companies/firms of which they are Directors/Proprietors/Partners, as also file an affidavit disclosing therein their (and their familys) personal assets, they having entered into an agreement with the petitioner in their individual capacities only to avoid arrest.*
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> *The next contention made by Mr. Chibber, to the effect that the money received in July 2018 from M/s KRBL Ltd, and other money available with the respondents, was paid to other creditors, would not find acceptance with this court to the extent that the*

respondents having entered into a compromise in the Mediation and Conciliation Centre of this Court only so as to ensure that the interim order passed in CRM-M-46963 of 2017 granting them anticipatory bail was confirmed, in my opinion it was their bounden duty to first discharge that obligation before going on to pay any other creditors, if they wished that the order admitting them to bail should continue to enure in their favour.

Be that as it may, for the moment, in terms of the undertaking given, adjourned to the aforesaid date, i.e. 20.02.2019, with the respondents expected to honour their statements, failing which, naturally, the obvious order would be passed by this Court.

Two demand drafts of Rs. 12.50 lacs each have been handed over by learned counsel appearing for respondents no. 2 and 3 to learned counsel appearing for the petitioner."

11. On 05.03.2019, it was recorded by this court that a total amount of Rs. 1,10,00,000/- (by way of bank instruments) had been paid by respondents no. 2 and 3 to the petitioner but with the contention of learned counsel for the petitioner being that there was still an amount of Rs. 2.05 crores outstanding as per the agreement reached between the parties in February 2018.

Learned counsel for the petitioner had also submitted on that date that even though the stand of the said respondents was that the accounts of M/s KTC Food Private Limited had been frozen in terms of the IB Code 2016, they had been paying off debts to different people piecemeal, with him having produced in court an order dated 28.02.2019 passed by the learned Judicial Magistrate Ist Class, Jind, stating therein that the said company had made a payment of Rs. 10,00,000/- to the complainant in another case (in the context of which a criminal case was pending before that court under the provisions of Section 138 of the Negotiable Instruments Act, 1881).

Learned counsel appearing for respondents no. 2 and 3 had also filed an affidavit on that date, annexing therewith what were contended to be balance sheets of different companies of which the said respondents were Directors etc.

12. It is also important to notice that learned counsel for the petitioner had time and again stressed upon one argument, to the effect that respondents no. 2 and 3 had also got a running account with the Panipat Urban Cooperative Bank Limited, Meerut Road, Karnal, in which account Rs. 3.28 crores was received by them from a company known as M/s KRBL Limited, and with the said account having been opened by these respondents after declaration of non-performing assets in the context of their accounts in the Oriental Bank of Commerce.

Learned counsel for the petitioner further submitted that even after the IRP had been appointed by the National Company Law Tribunal, a total amount of Rs. 59 lacs was received in that account between 11.09.2018 to 28.09.2018 and which they also withdrew, without disclosing that account to the IRP/RP.

13. Mr. Panwar, learned counsel for the petitioner, had also submitted that respondents no. 2 and 3 violated the conditions of the bail granted to them, inasmuch as they travelled abroad after the bail was granted, without permission of the court; and consequently their bail bonds deserve to be forfeited and their admission to bail cancelled on that ground alone.

14. Arguments had carried on thereafter on various dates in the same

vein, which need not be gone into at this stage, in view of the fact that eventually before judgment was reserved in the matter, written arguments have also been filed by learned counsel for the petitioner as also for respondents no. 2 and 3.

15. It is however to be noticed that on 14.05.2019 an application had been filed by some other persons, seeking to be impleaded as respondents in the petition, on the ground that respondents no. 2 and 3 had cheated those persons also, pursuant to which some others FIRs have also been registered by the applicants/other persons; however, considering that the said applicants had nothing to do with the transactions as were subject matter of the FIR in the context of which the 'present petition' was filed, that application had been dismissed.

16. In the very detailed written submissions that learned counsel for the petitioner has given this court, essentially of course it is the aforesaid arguments which have been reiterated but with it also stated that there are about 21 FIRs registered in different Districts of Haryana, in Delhi and even in U.P., on account of frauds committed by respondents no. 2 and 3 with different persons.

It has next been stated that respondents no. 2 and 3 are being aided by their brother Rajinder Singla and other members of their family and in view of the fact that the entire family is involved in cheating different people, they do not deserve to remain on the bail granted to them by this court.

17. Mr. Chhibber, learned senior counsel appearing for respondents no. 2 and 3, both in oral arguments as also in the written submissions tendered by his instructing counsel, submitted that the company of which respondents

no. 2 and 3 are Directors (M/s KTC Foods Private Limited), unfortunately ran into various difficulties and due to different creditors of the company having filed complaints before the NCLT, a Corporate Insolvency Resolution Process was initiated, with an IRP (later RP), having been appointed and that all affairs of the company, including bank accounts, had been therefore taken over by Resolution Professional.

18. As regards different FIRs registered, learned senior counsel submitted that most of the matters have resulted into a compromise between the parties and consequently, simply the registration of different FIRs against the said respondents/any family members of theirs, would not mean that the bail granted to them should be cancelled.

19. Learned senior counsel time and again stressed upon the fact that even though the compromise reached between the petitioner and respondents no. 2 and 3, on the strength of which the latter were admitted to bail, was signed by the said respondents in their personal capacity, yet, since the debt owed to the petitioner/his firm is on account of transactions with M/s KTC Foods Private Limited, the respondents cannot be held to be personally bound to that compromise after the affairs of the company have been taken over by the Resolution Professional on directions of the NCLT.

He reiterated that though undoubtedly respondents no. 2 and 3 had defaulted even in payment of the first two installments, as were due to the petitioner, before the Resolution Professional was appointed, that entire amount, along with interest thereupon, had been duly paid by respondents no. 2 and 3 to the petitioner to the tune of Rs. 1.1 crores (as already noticed earlier in this judgment); and consequently, with them not having any control over the accounts of their company any longer, the bail bonds do not deserve to be cancelled.

20. He next submitted that though, correctly, the said respondents should have taken permission of this court before travelling abroad, yet, it was not that they fled the country but duly returned and simply on account of that 'temporary lapse', again their bail bonds do not deserve to be forfeited.

21. Having considered the matter, whereas though I was otherwise inclined to agree with learned counsel for the petitioner that respondents no. 2 and 3 having defaulted in paying the installments and therefore having violated the terms of the compromise reached between the petitioner and them in their personal capacity, their bail bonds deserve to be forfeited; however, upon looking at the totality of the circumstances to the effect that at least uptill the time that the Interim Resolution Professional/RP was appointed, the amount as had become due by way of installments to the petitioner, has been paid by respondents no. 2 and 3 along with interest thereupon (Rs. 1.10 crores in all), and they obviously do not have any control over the bank accounts of the company which had actually incurred the liability, at this stage at least it would not seem to be proper to forfeit their bail bonds and to withdraw the bail granted to them.

22. As regards the contention of learned counsel for the petitioner that respondents no. 2 and 3 having signed the agreement dated 14.02.2018 in their personal capacity with not even a reference to their company (M/s KTC Foods Private Limited), and therefore they are bound to pay installments to the petitioner in terms of such compromise even from their personal accounts/from the proceed of their personal assets, though I had been very inclined to agree

with Mr. Panwar on that contention, yet, upon due consideration of the matter, what cannot be denied is that the money admittedly owed to the petitioner/his firm is by M/s KTC Foods Private Limited, i.e. the company as had entered into transactions on account of which such liability had been incurred by it and therefore I would be of the opinion (subject to what is held in the following two paragraphs), that the bail granted to the said respondents should not be cancelled at this stage at least on account of non-payment of the installments due to the petitioner in terms of that agreement, because with the accounts of the company that actually owed the petitioner that money, having been frozen/taken over by the Resolution Professional appointed by the learned NCLT, it would seem to be unfair to cancel their bail bonds on that count.

As regards Mr. Panwars' contention that respondents no. 2 and 3 having travelled abroad in violation of the conditions contained in the provisions of Section 438 (2) of the Cr.P.C., and therefore their bail bonds deserve to be cancelled on that ground alone, he would be correct in that contention but for the fact that the said respondents had returned from abroad on their own and have remained in India thereafter with their passports directed to be surrendered by this court and consequently, this court not having cancelled their bail bonds on that count immediately thereafter, at this stage again it would seem to be inappropriate to do so.

23. However, if they had indeed not disclosed some bank accounts to the Resolution Professional as they may otherwise have been bound to do, the petitioner would be at liberty to bring that fact to the notice of the Resolution Professional in any complaint that the petitioner may chose to file before the NCLT and if it is indeed found that respondents no. 2 and 3 have withheld

information, including bank accounts etc. as they would have been bound to disclose to the NCLT/the RP, then the petitioner would be at liberty to file a petition again under the provisions of Sections 439 (2) and 482 of the Cr.P.C. for cancellation of their bail bonds; because that would obviously mean that the intention of respondents no. 2 and 3 was wholly *mala fide* and therefore they do not deserve to remain on bail.

24. In view of what has been discussed immediately hereinabove, this petition is dismissed but with it made absolutely clear that if upon filing appropriate proceedings before the NCLT/the Resolution Professional, it is found that respondents no. 2 and 3 have indeed cheated/attempted to cheat even that forum, then they do not deserve to remain on bail any further because in such case their intention even towards the petitioner would become absolutely clear, to the effect that though they had access to money in the credit of their company (M/s KTC Foods Private Limited), they deliberately did not pay the petitioner the amount due to him in terms of the settlement reached between them.

April 18, 2022 **(AMOL RATTAN SINGH)**
nitin **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes