

**207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision :18.07.2022

(I) CRM-M-16219-2022 (O&M)

Abhijeet Gupta .. Petitioner
Versus

State of Punjab ...Respondent

(II) CRM-M-16771-2022 (O&M)

Abhishek Singh Gaur .. Petitioner
Versus

State of Punjab ...Respondent

(III) CRM-M-16783-2022 (O&M)

Pawan Kumar Pandey .. Petitioner
Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Bhriagu Agnihotri, Advocate,
for the petitioners. (in all petitions)

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The present order shall dispose of three petitions bearing No.CRM-M-16219-2022 titled as 'Abhijeet Gupta versus State of Punjab', CRM-M-16771-2022 titled as 'Abhishek Singh Gaur versus State of Punjab' and CRM-M-16783-2022 titled as 'Pawan Kumar Pandey versus State of Punjab'.

The present petitions have been filed under Section 438 Cr. P.C. For the grant of anticipatory bail to the petitioners in common FIR no.178/2021 dated 15.11.2021 registered under Sections 420 and 120-B IPC at Police Station City-1, Mansa, Punjab.

The brief facts of the case are that the complainant Rakesh Kumar got registered the present FIR with the allegations that he had constituted a firm in the name of HRK Solar Infra Developments in Mansa City, in partnership with Rajinder Singh and was doing contract work in the Solar Plant. The complainant met Abhishek Singh Gaur-Petitioner, who had constituted a firm in the name of Radite Energy at Gurugram, and offered the complainant to work through out India at three locations, under which the work of solar plants was to be done at Budhalada (Punjab) Jodhpur, (Rajasthan), and Tumkar (Karnataka). The complainant had completed the work at the three locations and sent the complete details in the form of bill to Abhishek Singh Gaur following which Abhishek Singh Gaur made same payments to the complainant but the complainant was left with an outstanding amount of Rs. 73,17, 774/- which he was entitled to receive. However, Abhishek Singh Gaur, in connivance with Pawan Kumar Pandey petitioner in CRM-M-16783-2022 and Abhijeet Gupta petitioner in CRM-M-16219-2022 with an intention to cheat the complainant, sent an email to the complainant stating that they had dissolved the Firm namely M/s Radite Energy and would pay the outstanding amount jointly to him. The complainant contacted the petitioners a number of times for making payment of the outstanding amount, which was not made. In December, 2020, Abhishek Singh Gaur told him over the phone that cheating was their business and he had done the same with the complainant. On the said

complaint, an enquiry took place and the present FIR was registered.

The learned Counsel for the petitioners contend that allegations levelled against the accused would amount to a civil dispute at best. In fact the complainant in gross violation of the work orders/contract did not execute the work assign to him and left the same incomplete at the site where the project was to be developed. Due to this conduct of the complainant, the petitioners had to suffer heavy losses. Despite this fact, the complainant had been paid a sum of Rs. 55 lacs, approximately, from the Account of M/s Radite Energy Infra Solutions Pvt. Ltd. and Rs.1,80,29,451/- from the account of M/s Radite Energy. He contends that while executing the work at the site, the complainant had sublet the work to a local contractor, namely, Habib Khan who was illegally occupying the said site and harassed the petitioners. In fact the complainant himself did not pay the sum of Rs. 21, 50, 000/- to the sub contractor, namely, Habib Khan and it was the petitioner Abhishek Gaur who had to pay a sum of Rs.11, 50,000/- to the Said Habib Khan. The complainant had also not complied with the necessary requirements of billing and payment and also did not provide the essential clearance certificates. His conduct was similar with respect to the work contract awarded at Karnataka. It was thus, contended that the complainant is giving a criminal colour to a civil dispute just to harass the petitioners to coerce them into a forced settlement by using state machinery.

With respect to the role of petitioner Abhijeet Gupta, the counsel contends that he was not a director of the company i.e. M/s Radite Energy Infra Solutions Pvt. Ltd. during the period when the said contract/work order was executed with the complainant. He submits that work order was

awarded to the complainant in the year 2016 whereas the petitioner has become the director of the company in the year 2018. Reliance in this regard, is placed upon the records of MCA (Annexure P-3).

With respect to the role of petitioner Pawan Kuma Pandey, it is argued that the petitioner was not in custody of any documents sought by the Investigating Agency. He was also no longer associated with the company i.e. M/s Radite Energy Infra Solutions Pvt. Ltd..

The petitioners were granted the concession of interim anticipatory bail by this Court vide orders dated 21.04.2022 and 25.4.2022 and have since joined the investigation.

The learned counsel for the State while referring to the reply dated 03.05.2022, has submitted that in terms of the interim order of this Court, the petitioners had joined the investigation but did not cooperate with the Investigating Officer. They had not provided the record pertaining to the resignation of Abhishek Singh Gaur-petitioner, balance sheet of the Firm at the time of its closure and other record required for the purpose of investigation. It was thus, contended that custodial interrogation of the accused was required.

The learned counsel for the complainant has supported the submission made by learned counsel for the State and has argued that petitioners have committed a grave offence inasmuch as a sum of Rs.73,17,774/- remains to be paid by them to the complainant. As they had knowingly closed the firm M/s Radite Energy and formulated a new firm in the name of M/s Radite Energy Infra Solutions Pvt. Limited to cheat the complainant, they did not deserve the concession of bail.

I have heard learned counsel for the parties and gone through the case files.

A perusal of the FIR reveals that this is a case where the complainant alleges that he had completed the work given under a contract for which the petitioners have not made the requisite payment. On the other hand, it is the case of the petitioners that the complainant in fact had not completed the work under the contract that was awarded to him in the various sites around the Country and, therefore, no amount was due to him. On the contrary, they had to incur huge expenses on account of the act and conduct of the complainant.

Admittedly, the petitioners have joined the investigation. The records sought by the Investigating Agency are public records and may be easily accessed by them. As such, it cannot be said that the petitioners are not co-operating in the police investigation. In view of the allegations and counter-allegations, it would be the matter of adjudication during the trial as to whether a criminal offence is made out or not. Therefore, at this stage, no case for the custodial interrogation of the petitioners has been made out.

Therefore, without commenting upon the merits of the case the present three petitions are allowed.

The interim orders dated 21.04.2022 in CRM-M-16219-2022, 25.04.2022 in CRM-M-16771-2022 and CRM-M-16783-2022 are made absolute.

However, the petitioners shall keep on joining the investigation as and when required to do so and they shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Petitions stand disposed of.

A photocopy of this order be placed on the files of the
connected cases.

(JASJIT SINGH BEDI)
JUDGE

18.07.2022

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