

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22901-2022

Date of Decision: 01.09.2022

Vinod Swami

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chandan Singh Rana, Advocate, for the petitioner.

Mr. Tarun Aggarwal, Sr. D.A.G., Punjab.

VIKAS BAHL, J. (Oral)

This is the first petition under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No. 0262, dated 20.10.2021, under Sections 408 and 420 of the IPC, registered at Police Station Moti Nagar, District Ludhiana.

On 30.05.2022, a co-ordinate Bench of this court, was pleased to pass the following order:-

“Prayer is for grant of anticipatory bail in case FIR No.0262 dated 20.10.2021 under Sections 408,420 IPC registered at P.S Moti Nagar, Ludhiana.

FIR was lodged on the application submitted by Surinder Kumar Tak, who stated that he is Director, Gangour Logistics Pvt Ltd, Plot No.2-A, Industrial Area-A, Ghora Factory Road, Ludhiana. It is a leading Transport Company for booking and delivery of goods at the door step in the States of Punjab, Rajasthan and other States. Petitioner was working as Branch Manager in the office of the Company at Jodhpur and was responsible for delivery of the goods and consignment at Jodhpur including receiving of payment and depositing in the account of the complainant. The complainant along with other Executives of

the Company visited the office at Jodhpur in February 2021. On reconciliation of all the outstanding amount with the customers, an amount of Rs.19,70,000/- was found to have been misappropriated and misused by the accused. With the misappropriated amount he had constructed a residential house in Jodhpur. Petitioner received payments from the consignees but did not deposit the same with the complainant and thus criminally misappropriated the amount to the tune of Rs.19,70,000/-. He admitted his liability vide writing dated 12.02.2021. He issued two cheques bearing No.000021 dated 01.03.2021 and No.000013 dated 17.03.2021 for Rs.8,00,000/- and Rs.11,70,000/- respectively. Upon being presented, cheque No.000021 was returned unpaid with the remarks 'Payment Stopped by Drawer' vide bank memo dated 02.03.2021 whereas cheque No.000013 was returned with the remarks 'Funds Insufficient vide bank memo dated 18.03.2021.

Mr. B.S. Makkar, ld. Counsel for the complainant has argued that in regard to the dishonor of the two cheques issued by the petitioner, the complainant has already filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner which is pending. He argued that in view of the complaint under Section 138 of the Negotiable Instruments Act having been filed the proceedings under Section 406 and 420 of the IPC are not maintainable and would be an abuse of the process of law. He relied on decision of Hon'ble Supreme Court in G. Sagar Suri Vs. State of U.P. 2000(2) SCC 636.

Mr. Makkar, Ld. Counsel for the complainant argued that apart from the amount of Rs. 19,70,000/- as mentioned in the FIR the petitioner had taken an advance of Rs. 6,32,000/- from the complainant which the petitioner had not returned. He had also taken Rs. 60,000/- for paying electricity bills which he did not deposit.

Ld. Counsel for the petitioner argued that there is no material to substantiate the subsequent allegations of the complainant that he had advanced Rs. 6,32,000/- to the petitioner which the petitioner had not returned. Nor is there any material to indicate that the petitioner had taken Rs. 60,000/- for paying electricity bills as alleged. He states that the petitioner is ready

and willing to co-operate with the investigation.

Notice of motion for 01.09.2022.

Meanwhile, in the event of his arrest, the petitioner shall be released on interim anticipatory bail to the satisfaction of the Arresting/Investigating Officer. He shall join the investigation as and when called upon to do so and shall abide by all the conditions as enumerated in Section 438(2) Cr.P.C.

(Harinder Singh Sidhu)
Judge

30.05.2022”

Learned counsel for the petitioner has submitted that in pursuance of the above-said order, the petitioner has joined the investigation.

Learned State counsel, on instructions from ASI Karamjit Singh, has submitted that the petitioner has joined the investigation and is not required for further investigation.

Keeping in view the abovesaid facts and circumstances moreso, the facts which have been noticed in abovesaid order dated 30.05.2022 and also the fact that the petitioner has joined the investigation and is not required for further custodial interrogation, the present petition is allowed and the interim order dated 30.05.2022 is ordered to be made absolute.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

September 01, 2022
nitin

Whether speaking/reasoned
Whether Reportable

(VIKAS BAHL)
JUDGE
Yes
No