

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

204

CRM-M-25804 of 2021 (O&M)

Date of Decision: 07.07.2022

Rajesh Kumar Arora and Anr.

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Neeraj Kumar, Advocate,
for the petitioners.

Mr. Ranvir Singh Arya, Addl. A.G., Harayna

Mr. Rahul Bhargava, Advocate
for the complainant.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of Cr. P.C. for the grant of anticipatory bail to the petitioners in case bearing FIR No.277 dated 31.07.2019 under Section 420, 406, 120B, 467, 468, 471 and 34 of IPC, registered at Police Station Civil Lines, Sonipat.

Learned counsel for the petitioners has submitted that the petitioners have been falsely implicated in the present case and while issuing notice of motion vide order dated 20.07.2021 the petitioners were granted interim bail by this court and in pursuance of the aforesaid order the petitioners have joined the investigation and have fully cooperated with the investigation process and has therefore prayed that the interim bail granted to the petitioners may be made absolute.

He submitted that as per the allegations contained in the FIR against the petitioner and other co-accused were that an amount of Rs.1.91 crores were received by the petitioners out of which Rs.71 lakh was

transferred by way of bank transfer and the remaining amount was given by cash against receipts, the same amount was taken by the accused persons including the petitioners on the basis of some agreement to sell with one Ish Kumar with regard to some property but such an agreement was not in existence and in this way a fraud has been committed by the petitioners towards the complainant. He submitted that in fact the allegations were false and frivolous because petitioner No. 2 and the complainant are related to each other and they are cousins and they have been engaged in business of manufacturing and trading of batteries for long time and due to Covid-19 pandemic the business was affected and the relations turned sour. He submitted that there were some cheques which were already with the complainant which were thereafter misused by the complainant.

He further submitted that out of the aforesaid amount Rs.15 lacs have been returned back by way of bank transfer and so far as the remaining amount of Rs.1.76 crores is concerned the complainant misused the cheques by filling up the same said amount and presented before the bank which was ultimately dishonored and complaint under Section 138 of the Negotiable Instruments Act was filed which is still pending. He further submitted that the present is a case of pure and simple financial dispute and money transaction pertaining to a business which has been given a criminal flavour by the complainant and the petitioners have been falsely implicated in the present case.

On the other hand, Mr. R.S. Arya, Addl.A.G., Haryana has submitted that an affidavit has been filed by the State and while referring to the affidavit he submitted that in pursuance of the orders passed by this court dated 20.07.2021 the petitioners have joined investigation. However, he has

stated that the petitioners have not cooperated with the investigation process by not disclosing from where they got the agreement to sell executed and what was the *modus operandi* to prepare the document in this regard.

Mr.Rahul Bhargava, learned counsel for the complainant submitted that the petitioners have cheated the complainant and have committed a fraud. He submitted that the subject matter of the present dispute was Rs.1.91 crores out of which the petitioners have returned Rs. 15 lacs by way of bank transfer and it is also correct that with regard to the amount Rs.1.76 crores approximately proceedings under section 138 of the Negotiable Instruments Act are still pending. He further stated that it is not correct that petitioner No.2 and complainant are the cousins but they are neighbours and they were certainly not having trade relations with each other and has also denied any business activity between the petitioners and the complainant. He stated that the remaining amount although regarding which the proceedings under section 138 of the Negotiable Instruments Act are pending is yet to be recovered from the petitioners and therefore the custodial interrogation of the petitioners is required.

I have heard the learned counsel for the parties.

This Court while issuing notice of motion has granted interim bail to the petitioners and in pursuance of the aforesaid order as per the learned State counsel the petitioners have joined investigation. The only objection which has been raised by the learned counsel for the State as well as the complainant is that the remaining amount was required to be recovered from the petitioners and the agreement was also required to be recovered. The learned State counsel has also referred to para 7 of the reply filed by the State in which it is stated that during investigation it has been

found that the said Ish Kumar with whom the purported agreement was executed has denied the execution of the agreement and it has been stated in the affidavit that there are direct and specific allegations and sufficient evidence against the petitioners with regard to the commission of the offence. However, during the course of arguments learned counsel for the petitioners has specifically submitted that there was no agreement at all and it was all a fabricated and concocted story made by the complainant with regard to execution of the agreement and in fact the complainant has misused the cheques which he had given during the course of trade. Therefore, the only issue on the basis of which the learned counsel for the State as well as the complainant are objecting to the present petition is for the recovery of money regarding which the proceedings under Section 138 of the Negotiable Instruments Act is already pending.

Both the petitioners in pursuance of the orders passed by this Court have joined investigation. Whether the petitioners and the complainant were having any trade relationship or not is a matter of evidence which can be decided by adducing evidence during trial. The question that would remain would be as to whether the right of liberty granted to the petitioners under the Constitution of India can be deprived only on the ground that some money is to be recovered from them according to the complainant and the State.

This court is of the considered view that the objection taken by the learned State counsel as well as the learned counsel for the complainant that the custodial interrogation of the petitioners is required for the purpose of recovery of money would not be sustainable. Once the petitioners have joined the investigation admittedly, they cannot be denied the benefit

of anticipatory bail only on the ground that an amount of money is to be recovered. Furthermore, with regard to the disputed amount, proceedings under Section 138 of Negotiable Instruments Act are pending as per learned counsels for parties.

In view of the aforesaid factual position, the present petition is allowed and order dated 20.07.2021 is, hereby, made absolute.

However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

07.07.2022
Sunil Devi

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |