

Sr. No. 203

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

CRM-M No.28753 of 2021(O&M)

Date of Decision: 30.05.2022

Anurag

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Vinod Ghai, Sr. Advocate, with
Ms. Kanika Ahuja, Advocate,
Mr. Manish Soni, Advocate,
for the petitioner.

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

Mr. H.S. Dhindsa, Advocate, for the complainant.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in the criminal case arising out of the FIR bearing No.356 dated 04.05.2021, under Sections 406, 420, 506 and 120-B IPC, registered at Police Station City Gurgaon Sadar, District Gurugram.

Learned Senior counsel for the petitioner has submitted that in pursuance to the order passed by this Court on 27.07.2021, the petitioner has already joined the investigation and has fully co-operated with the investigation process and in pursuance to the order passed by this Court, he has also surrendered his passport to the Investigating Officer. He further

submitted that it is a case where the allegations against the petitioner are that the complainant namely M/s Alethe Consulting Pvt. Ltd. was having business dealings with the company of the petitioner, which is named as M/s R.K. Solutions and the petitioner is the proprietor of the same and the dealing was with regard to supply of some hardware, which was to be supplied by the complainant to the petitioner so that the same can be sold to various distributors and other customers. He further submitted that although there was no written agreement between the parties, but the complainant had supplied him the requisite hardware for the purpose of further supply to the consumers from time to time and thereafter payments were made directly to the complainant from time to time. Thereafter, due to lock-down because of Covid Pandemic, the business was stopped and the petitioner had already paid approximately Rs.84.00 lacs to the complainant vide Annexure P-2. Learned counsel for the petitioner has further submitted that in fact the dispute was purely a financial dispute between two companies and at the most, a civil dispute but the complainant has chosen to lodge this FIR for the purpose of recovery of money. He has submitted that most of the material, which was received by the petitioner was returned back to the complainant since the market conditions were not proper due to Covid pandemic and he further submitted that be that as it may, it was a dispute based upon the evidence, which can be at the most led at the time of trial and in such like of matters of civil nature, the lodging of the FIR is an abuse of process of law. He has further submitted that there is a dispute of Rs.4.7 crores raised by the complainant with regard to the supply of the hardware regarding which according to the complainant, the money was not paid to

him. He submitted that for the aforesaid amount, the petitioner had already issued cheques to the complainant and proceedings under Section 138 of the Negotiable and Instruments Act, 1881(for short 'the Act') are pending in this regard. He further submitted that the complainant had also filed a complaint under the MSME Act for the recovery of the amount, which is also pending. Learned Senior counsel further brought to the notice of the Court the affidavit filed by the State, in which it has been stated that the petitioner has joined the investigation in pursuance to the order passed by this Court, not once but more than once and the only ground of objection taken by the State was that his custodial investigation was required for the purpose of recovery of the amount as well as the IT hardware equipments. He has, therefore, prayed that the interim order granting bail to the petitioner may be confirmed.

On the other hand, learned State counsel has referred to para 5 of the affidavit/status report filed by the Assistant Commissioner of Police, Crime II, Gurugram, wherein it has been stated that the petitioner has already joined the investigation on 04.08.2021 and has also produced his passport. Thereafter, the petitioner has again joined the investigation on 12.08.2021, 17.09.2021 and 11.10.2021. However, he did not co-operate with the investigation process and did not get recovered any amount or IT hardware equipment. It has further stated in para No.10 that the investigation of the case is going on and the custodial interrogation of the petitioner is required for the purpose of recovery of the embezzled amount as well as the remaining IT hardware equipments, which have not been sold by the petitioner and are still in his possession.

Mr. Dhindsa, learned counsel for the complainant has submitted that the petitioner has committed a fraud upon the complainant by taking the IT equipments/hardware from him which although was for the purpose of further selling to the users but the same were neither sold by him nor the amount was returned back to the complainant. So far as the pendency of the proceedings under the Negotiable Instruments Act and the MSME Act are concerned, learned counsel for the complainant has submitted that the same is correct. He has submitted that the petitioner does not deserve the concession of anticipatory bail, even if he has joined the investigation, in view of the fact that the amount of Rs.4.7 crores is still to be recovered from the petitioner since he has committed a breach of contract, which he made voluntarily and has not returned back either the money or the IT equipments. He further submitted that the petitioner had taken money from the complainant, which was used by him for purchasing luxurious cars etc. and diverting the same towards his personal accounts.

I have heard learned counsel for the parties.

This Court vide order date 27.07.2021, granted interim bail to the petitioner, subject to his joining of the investigation and also with an added condition that the petitioner shall forthwith deposit his passport with the I.O. and he shall not leave the country without permission of the Court.

Today, learned State counsel, on instructions from ASI Ravinder, and also by referring the affidavit filed by the State submitted that in pursuance of the aforesaid order, the petitioner has joined the investigation for four times and he has also surrendered his passport and he has not violated any condition contained in the order. Learned State

counsel has, however, submitted that the petitioner has not returned back the money to the complainant and some IT equipments/hardware are also lying in his possession and the same have not been returned by him. Learned counsel for the complainant has also opposed the grant of anticipatory bail on the same ground. A perusal of the affidavit filed by the State would show that the petitioner has joined the investigation for four times and the only ground for objection taken by the State, which is stated in para 10 specifically, is that his custodial interrogation is required for the purpose of recovery of the amount as well as the IT hardware equipments. The facts of the present case suggest that there was one to one financial transactions between the parties and some material was supplied by the complainant to the petitioner. But a dispute arose between them, which may be because of the Covid Pandemic. It is clear that the dispute was a financial dispute between the parties and there appears to be breach of contract between the parties. The petitioner also issued some cheques of the disputed amount and regarding which proceedings under Section 138 of the Negotiable Instruments Act are still pending. Therefore, objection raised by the learned State counsel and learned counsel for the complainant that it was only for the recovery of money and for some IT equipments that his custodial interrogation is required, cannot sustain in view of the fact that it is a settled law that the police is not a recovery agent. The petitioner has already joined investigation, which is not disputed by the parties and he has also surrendered his passport and there is an additional condition, which was imposed by this Court vide order dated 27.07.2021 that he shall not leave the country without the permission of the Court.

Consequently, the present petition is allowed and order dated 27.07.2021 is, hereby, made absolute.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and it only meant for the purpose of decision of the present petition.

30.05.2022
monika

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No