IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

104

CRM-M-28705-2022
Date of decision: 08.07.2022

ABHISHEK KUMAR GOYAL ....Petitioner

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present : Mr. Vinod Ghai, Senior Advocate with
Ms. Mahima Dogra, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

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VINOD S. BHARDWAJ. J. (ORAL)

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in case FIR No. 256 dated 15.12. 2021 registered under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 at Police Station Bhawanigarh, District Sangrur.

2. Present FIR was registered on the basis of application received by the SSP, Sangrur from Assistant Registrar, Co-operative Society, Sangrur to take action against the Manager of Kissan Co-operative Marketing-cum-Processing Society Limited, Bhawanigarh namely, Simarjit Singh, former Chairman of the Society Gurtej Singh, partners of Goyal Sales Corporation namely, Sanjiv Goyal, Abhishek Kumar Goyal (petitioner) and Bachittar Singh, PA to Co-operative Society Minister of Punjab. On receipt of the said application, inquiry was conducted by DSP (PBI) Spl. Crime. It was found that Abhishek

Kumar (applicant), Sanjiv Kumar son of Rameshar Dass in connivance with Bachittar Singh and other co-accused got the membership of the said Society in the name of Goyal Sales Corporation, Ratola (Malerkotla) which was against the rules and bylaws of the society. They purchased various goods including sugar and ghee for Rs. 2,16,27,913/-. Out of the said amount, Rs. 1,68,09,913/- is yet to be recovered from them. During the said inquiry, it was further found that Goyal Sales Corporation, Ratola did not fall into the area of Bhawanigarh Society and it could not be made a nominal member of the same. No GST number of Goyal Sales Corporation Ratola was found in the papers at the time when they were nominated as nominal members. Accused Abhishek Kumar (applicant) used to carry on the entire business with the Society, Bhawanigarh. It was further found that the articles were supplied on GST No. 03AEHPG3090FIZY which was allotted in the name of Proprietor Sanjiv Kumar son of Parkash Chand, resident of District Ludhiana but as per GST record of Society, Bhawanigarh from GST No. 03AACAT6680Q1ZW Goyal Sales Corporation Malaud (Malerkotla) with GST No. 03AEHPG3090FIZY, no goods has been supplied. Therefore, forged bills were prepared on GST No. 03AEHPG3090FIZY as no record could be traced between the said two GSTs numbers. Goyal Sales Corporation Ratola (Malerkotla) was inducted as nominal member on 24.06.2020 but as per bills, Bhawanigarh Society had supplied goods to the said Goyal Sales Corporation from 01.06.2020 to 31.03.2021 and the receipts on the record were issued from 23.05.2020 to 20.12.2020. The said dates did not match with each other. It had come up in the inquiry that

Bhawanigarh Society had supplied goods/articles to Goyal Sales Corporation for an amount of Rs. 2,16,27,913/-. To discharge the said liability, Abhishek Kumar (applicant) and Sanjiv Kumar had got deposited Rs. 48,18,000/- on different dates with the Society but Rs. 1,68,09,913/- is still due against the accused. Abhishek Kumar (applicant) produced cheque issued by Sanjiv Kumar for Rs. 1 cr. 66 lakh but on presentation of the said cheque in the bank, it was dishonoured as signatures could not be matched. Thereafter, Abhishek Kumar issued a cheque from his own bank account which was dishonoured on the account of stoppage of payment. After conducting inquiry, it was recorded by Inquiry Officer that Abhishek Kumar (applicant), Sanjiv Kumar and Bachittar Singh, Manager Simarjit Singh, former Chairman Gurtej Singh had hatched conspiracy with each other as Goyal Sales Corporation, Ratola (Malerkotla) inducted as nominal member on producing of GST number which belonged to some one else and they had cheated the Society of Rs. 1,68,09,913/-.

3. Learned Senior counsel for the petitioner has referred to the FIR that has been registered at the instance of Deputy Registrar, Co-operative Societies, Sangrur wherein the State Prosecuting Agency had been requested to take action against owners/partners of the Goyal Sales Corporation and the members of the Administrative Committee of the Bhawnigarh Kissan Cooperative Marketing-cum-Processing Society Limited. It was pointed out that the petitioner along with one Sanjeev Goyal is alleged to have submitted forged documents and as result thereof availed supplies to the tune of Rs. 2,16,27,913/- and only paid a sum of Rs. 48,18,000/- and the remaining amount of Rs. 1,68,09,913.50

approximately is still outstanding. Various allegations were also levelled with respect to the eligibility of the Goyal Sales Corporation to be nominated as a member of the Society. It was further alleged that one Bachittar Singh son of Sadhu Singh, PA to the then Minister of Corporation had introduced the accused persons to the society.

4. Learned Senior counsel appearing on behalf of the petitioner contends that the enquiry into the allegations was concluded as per which Abhishek Goyal (petitioner herein) and Sanjeev Kumar (the co-accused who had filed CRM-M-27314-2022 and had withdrawn the petition for anticipatory bail), had got the membership of the Society in the name of Goyal Sales Corporation. It is submitted that the said Goyal Sales Corporation could not have been inducted as a member of the Society since it did not fulfill the eligibility and was not falling within its zone. The Investigating Agency has chosen not to nominate the members who introduced Goyal Sales Corporation as a nominated member and has elected to nominate the petitioner and not the persons as accused who had inducted Goyal Sales Corporation as a member of the primary boundary in violation of the bye-laws of the society. He further contends that the society had also passed a resolution on 01.03.2021 which was also signed by the Goyal Sales Corporation and arbitration proceedings to settle the dispute had been initiated. Thereafter, a further resolution was passed on 10.03.2021 wherein the name of the petitioner was also introduced in the arbitration/settlement proceedings. He contends that the allegations, if any, are only against Goyal Sales Corporation and that the role of the petitioner came only after cheque issued by Sanjeev Kumar (co-

accused) was dishonoured. The petitioner had issued the cheque from his own Account towards discharge of the liability owed by Sanjeev Kumar and that he has no active participation in the offence. He further contends that the other co-accused namely Bachittar Singh has already been granted the concession of interim bail by this Court vide order dated 22.06.2022 passed in CRM-M-27200-2022. He contends that arbitration proceedings in relation to the amount due have already been initiated and that the dispute is rather a monetary dispute in relation to recovery of amount and initiation of criminal proceedings would not be an appropriate remedy. A further reference is drawn to the bills that had been issued by the Co-operative Society in the name of Goyal Sales Corporation. It is contended that at this stage, the dispute is regarding the amount due and the initiation of criminal jurisdiction for settlement of civil dispute is an abuse of process of law.

5. Per contra, Ms. Amarjit Kaur Khurana, DAG, Punjab submits that inquiry into the allegations has been conducted by the Deputy Superintendent of Police and it was found that Abhishek Kumar (petitioner herein), along with Sanjeev Kumar and Bachhitar Singh along with other co-accused got the membership of the Bhawnigarh Kissan Cooperative Marketing-cum-Processing Society Limited against the rules and bye-laws of the Society. The purchase of various goods including Sugar and ghee to the tune of Rs. 2,16,27,913/- was done and out of the said amount Rs. 1,68, 09, 913.50/- is yet to be recovered. It was also found during investigation that the Goyal Sales Corporation Ratola (Malerkotla) did not fall in the area of the Society and could not have been nominated as a member of the same.

Furthermore, no GST Number of the Goyal Sales Corporation, Ratola was found in the papers at the time when they were nominated as nominal members. The petitioner Abhishek Kumar used to carry out the entire business of the Society and it was noticed that the Articles were supplied on GST No. 03AEHPG3090F1ZY which was allotted in the name of one Sanjeev Kumar son of Parkash Chand resident of District Ludhiana and not to the petitioner. Moreover, as per the GST record of the society Bhawanigarh, no goods have been supplied to Goyal Sales Corporation, Malaud (Malerkotla) with the aforesaid GST number. Hence, the forged bills were prepared against the aforesaid GST number despite the said registration not being related to the petitioner. Goyal Sales Corporation, Ratola (Malerkotla) was inducted as a nominal member but as per the bills, Bhawanigarh Society had supplied goods to the said Goyal Sales Corporation between 01.06.2020 to 31.03.2021 and the receipts on the record were issued between 23.05.2020 to 20.12.2020. Even the said dates did not match with each other. After the aforesaid fraud was brought to the lime light Sanjeev Kumar and Abhishek (petitioner herein) both deposited an amount of Rs. 48,18,000/- on different dates with the Society, however, the said remaining amount remains due. The petitioner produced the cheque of Sanjeev Kumar for a sum of Rs. 1,66,00,000/- , however, the said cheque was dishonoured on presentation to the Bank as the signatures on the cheque did not match. Thereafter, the petitioner issued a cheque from his own Bank account which was also dishonoured on account of stoppage of payment. The role of the petitioner is more at par with co-accused Sanjeev Kumar whose bail was dismissed as withdrawn.

6. I have heard learned counsel appearing on behalf of the respective parties and considered the rival submissions advanced by them.

7. The submission of the learned Senior Counsel that the dispute is largely a civil dispute and does not fall within contours of a criminal jurisdiction is unsustainable since the case in hand does not relate solely to the payment not having been made, rather, it relates to having secured the supplies on the strength of forged documents including the GST registration of a person by using similarity of the names and thus caused pecuniary loss to the society, of which it was well known to the petitioner that they could not be nominated as a member. Besides, merely because some amount is also due, it would not absolve an accused of the criminality of his actions and he is still accountable for the submission of forged documents. No explanation has been put forth by the learned counsel appearing on behalf of the petitioner as to why and under what circumstances the supplies were availed by the petitioner on the strength of the forged documents. Moreover, it is well settled in law that civil proceedings for recovery of the amount due and criminal proceedings can be initiated simultaneously. Mere passing of resolution to initiate arbitration proceedings would not *ipso facto* wipe out the criminal conduct of the accused persons.

8. Furthermore insofar as the reference made to the case of Bachittar Singh is concerned, the allegation against the said co-accused was solely to the effect that he had introduced the petitioner and his co-accused Sanjeev Kumar to the Society. It has not come forth that the

said co-accused had in any manner compelled the society to make any supplies or had availed any supplies from the society or shared the proceeds therein. The supplies were also secured by the petitioner and his co-accused Sanjeev Kumar and that there is nothing on record that any ill gotten proceeds were also utilized for the benefit of the said accused Bachittar Singh. The case of the petitioner is more at par with the co-accused Sanjeev Kumar who had applied for the concession of anticipatory bail vide CRM-M-27314 of 2022 and had withdrawn the same. Hence, the role of the petitioner is distinguishable as compared to the allegations against the said co-accused Bachittar Singh. He cannot thus claim parity. Needless to mention that primary Cooperative Societies are congregation of marginalized farmers who intend to bring together their proceeds and to market the same for mutual benefit. The petitioner has defrauded the said marginal persons of their hard earned money and have given no satisfactory explanation as to why the amount in question has been retained by him and why the said supply was secured by using forged documents. If the intent of the petitioner was clear and bona fide, the commercial activity would have been duly executed in a procedure known to law and by submitting proper documentation. Opting not to proceed as per law was a conscious decision on the part of the petitioner and he cannot claim to be a victim of his own mistakes.

9. Taking into consideration the nature of the offence, the manner in which the same has been executed, the scoundering away of the goods belonging to the primary Cooperative Societies as well as the deliberate attempt to submit forged documents relating to certain other

persons by taking advantage of similarity of names, I feel that custodial interrogation would be warranted in order to ascertain the true making of the offence and proportion of the crime. The Court is also seized of the fact that 06 other cases of similar nature have also been registered against the petitioner. It thus appears that he is habitual of committing crimes with pre-determined planning and execution. Thus, there are no grounds for exercising the inherent extra-ordinary jurisdiction under Section 438 Cr.P.C.

The present petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

JULY 08, 2022
vishal sharma

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