IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

CRM-M-28538-2019

Date of Decision: 30.08.2022

Dev Raj Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sahil Gupta, Advocate, for the petitioner.

Mr. Arun Beniwal, DAG, Haryana,
assisted by ASI Manjit.

Mr. Kulvir Narwal, Advocate, for the complainant.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of anticipatory bail in respect of a case registered against him vide FIR No.343 dated 22.05.2018 at Police Station Sadar Bahadurgarh, District Jhajjar, under Sections 34, 406, 420, 506 IPC.

2. The FIR in question was lodged at the instance of Rajbir Joon, wherein it is alleged that he is running a school under the name of 'Akash International School' at Nuna Majra, Jhajjar and that the same is registered in the name of Vikas Education and Religious Society. It is alleged that Dev Raj Singh (petitioner) and his nephew Piyush contacted him in July, 2017 and offered to run the school for the next Session commencing from April, 2018 under the name of 'Herald Crest'. Leave and License Agreement dated 03.10.2017 was executed and pursuant to

said agreement, Dev Raj Singh and Piyush started advertising with effect from February, 2018 and were also provided 3 rooms before hand in the school premises so as to enable them to do the needful i.e. for appointment of staff for the purpose of running the school w.e.f. April, 2018. It was agreed that the entire fee collected would be kept by the accused and that they would pay the salaries to the entire staff and that an amount of Rs.12 lakhs per month would be paid to Vikas Education and Religious Association. It is alleged that pursuant to the said arrangement, an amount of Rs.21,02,304/- towards fees was collected by accused in cash and another amount of Rs.6,55,902/- was received through cheque, which was deposited in the account maintained by M/s Herald Crest Education Pvt. Ltd. apart from yet another amount of Rs.5,05,625/-, which had been collected by Dev Raj Singh for the purpose of supplying books. It is further alleged that yet another amount of Rs.3,80,000/- had been collected for the purpose of swimming pool. The complainant has alleged that the accused after collecting the aforesaid amounts left the school without fulfilling their liabilities and without making payments to the staff and thus, defrauded the complainant and left everybody in lurch and also played with the future of the students.

3. Learned counsel for the petitioner has submitted that even if all the allegations as leveled in the FIR are taken to be correct, the entire case would at best constitute a 'civil liability' as regards the payment of some dues and it cannot be said that the petitioner had cheated the complainant by not making any payment. It has been submitted that in fact an amount of Rs.57 lakhs had been paid by the petitioner to the complainant in

advance. Learned counsel for the petitioner has further submitted that it was on account of the fact that upon a dispute having arisen amongst the parties, the complainant forced the petitioner out of the premises and in fact the school in question is still running and the students, who had been admitted at the beginning of the Session, are still continuing with their studies in the same school. Learned counsel has also submitted that the petitioner in order to prove his bonafides is willing and ready to deposit an amount of Rs.5 lakhs before the trial Court.

4. On the other hand, learned State counsel assisted by learned counsel for the complainant has submitted that it was a well orchestrated plan of the accused to defraud the complainant and that the accused after having collected huge amount in the shape of fees etc. had run away without even caring for the future of the students and had not even paid salaries of staff. Learned State counsel upon instructions has informed that pursuant to interim directions issued by this Court, though the petitioner had joined investigation, but is not cooperating with the investigation inasmuch as he has not produced the original Leave and License Agreement, details of the bank accounts etc. and had also not got the entire money recovered. It has, however, been informed that the school is still being run and the students admitted at the beginning of Session are still studying there.

5. I have considered rival submissions addressed before this Court.

6. Having regard to the facts and circumstances of the case, it will be debatable as to whether the facts would attract 'civil liability' only or as to whether the same would constitute some 'criminal offence' as well.

The contention of the learned State counsel that the petitioner is not cooperating inasmuch as he has not furnished the particulars of the bank accounts and has not furnished the original Leave and License Agreement and has not got the amount in question recovered as well as other documents recovered, can only be appreciated to the extent as far as non furnishing of the bank accounts and other documents is concerned. The question as to how much amount is due is still debatable and the fact that no amount has been got recovered cannot operate against the petitioner.

7. In view of the aforestated position and while also noticing that the petitioner is stated to have joined investigation, the petition is accepted and the interim directions issued by this Court vide order dated 19.07.2019 are hereby made absolute subject to the condition that the petitioner shall join investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

8. However, the petitioner is specifically directed to cooperate with the investigation and to furnish the particulars of the bank accounts and other relevant documents in his possession, in respect of the school in question.

9. The petitioner, as per his offer, shall also deposit an amount of Rs.5 lakhs before the trial Court/Illaqa Magistrate within a period of two months from today, which shall be got invested in FDR in some Nationalized Bank. The trial Court/Illaqa Magistrate shall, however, issue specific directions to the Bank concerned not to entertain any request for encashment of the same except under orders of the Court. In case, the petitioner is ultimately found guilty and convicted and such conviction

attains finality, the complainant shall be entitled to proceeds of said FDR. However, in case the accused/petitioner is found innocent and such acquittal attains finality, the petitioner shall be entitled to proceeds of the said FDR along with interest.

10. It is, however, made clear that in case the aforesaid amount is not deposited within the stipulated period of 2 months, the complainant would be at liberty to move an application for cancellation of bail.

30.08.2022 **(GURVINDER SINGH GILL)**
Vimal **JUDGE**

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