

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-34772-2020(O&M)

Date of decision : 23.08.2022

Prem Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Ms.Amrita Garg, Advocate
for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

Mr.Abhimanyu Singh, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.468 dated 07.08.2020 registered under Sections 167, 380, 406, 409, 420, 465, 467, 468, 471 and 120-B IPC at Police Station Hansi City, District Hansi, Haryana.

On 30.10.2020, a coordinate Bench of this Court was pleased to pass the following order:-

“Hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The petitioner prays for grant of pre-arrest bail in a criminal case arising from FIR No.468, dated 07.08.2020, registered under Section 167/380/406/409/420 /465/467/468/ 471/ 120-B IPC, at Police Station Hansi, District Hisar.

As per the case of the prosecution, a government construction contract, worth more than 6 Crore, was allotted in favour of M/s Mohalla Construction Company managed by the first informant Mahabir Singh. As per the case set up in the FIR,

M/s Mohalla Construction Company, through its owner Mahabir Singh, allocated the aforesaid construction work to the petitioner herein. It is not in dispute that the entire construction work was completed by the petitioner as instructed by the first informant. The allegations are that the petitioner has also taken away the amount of security on the basis of a stolen blank cheque on which signature of the first informant has been forged by the petitioner herein.

Learned counsel for the petitioner contends that the Economic Offences Wing, after detailed enquiry (Annexure P-2), found the complaint to be false.. He further submits that thereafter, the first informant managed to get this case registered.

Notice of motion for 25.11.2020.

Sh. Sanchit Punia, Advocate, appears for the first informant and states that the petitioner has forged his signatures not only on the cheque but also on the application for permission to withdraw the performance security.

Sh. Chetan Sharma, Assistant Advocate General, Haryana, accepts notice on behalf of the State.

Essentially, the dispute between the parties is arising from monetary transactions, particularly, when it is the case of the prosecution itself that the entire construction work has been carried out by the petitioner. The documents relied upon are already available with the department or with the investigating agency.

In these circumstances, it is considered appropriate to direct the petitioner to join the investigation.

In the meantime, in the event of arrest, the petitioners shall be released on interim bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

October 30, 2020

**(ANIL KSHETARPAL)
JUDGE”**

Thereafter, on 01.02.2022 another coordinate Bench of this Court was pleased to pass the following order:-

has referred to Annexure P-6 i.e. Deposit Confirmation/Renewal Advice, issued by the Bank of India, in the name of XEN Hansi W/S Division Hansi from account No.676020110000002. Counsel for the petitioner has then, referred to a cancelled cheque (Annexure P-11) to submit that this account belongs to the petitioner – Prem Kumar and in fact, he has deposited the security amount when the work was started and therefore, he has taken the amount back.

Counsel for the petitioner as well as counsel for the State are directed to file the statement of accounts on or before the next date of hearing.

The Investigating Officer is also directed to verify the aforesaid fact from the concerned Bank as well as the XEN, Hansi, Division Hansi and file an affidavit, in this regard on the adjourned date.

List again on 10.03.2022.

Interim order to continue.

Counter-affidavit, if any, by the complainant be also filed in the Registry, with advance copy to counsel opposite.

(ARVIND SINGH SANGWAN)
JUDGE

01.02.2022”

Learned counsel for the petitioner has submitted that in pursuance of said order, the State has filed status report by way of affidavit of Rajbir Singh, Sub Inspector, Police Station City Hansi, District Hisar and has referred to paragraph 9 of the said affidavit. Paragraph 9 of the said affidavit is reproduced hereinbelow:-

“That the investigating officer has also verified the fact from the Bank of India, Sirsa Road, Hisar branch pertaining to account No. 67602011000002 of the present petitioner from which one FDR amounting to Rs. 28,72,000/- was prepared in favor of XEN Water and Services Division, Hansi which was released on the request of the present petitioner from the department, on which the signatures of the present petitioner were appended and the same was drawn in the account of the present petitioner, but it is pertinent to mention here that the present petitioner is not entitled to get the security released in any manner without completion of work and that too, when the same was not allotted to him, rather

the same was allotted to M/s Mohla Construction Company.”

It is argued that a perusal of the same would show that it was from the account of the present petitioner, one FDR amounting to Rs.28,72,000/- has been prepared in favour of XEN Water and Services Division, Hansi and was released at the request of the petitioner from the department under the signature of the present petitioner and the same was drawn in the account of the present petitioner.

Learned State counsel as well as learned counsel for the complainant, on the other hand, have submitted that the present petitioner was not entitled to get the security amount released without completion of the work as the work had not been allotted to the present petitioner.

Learned counsel for the petitioner in rebuttal has submitted that the petitioner has joined the investigation and the entire case is based on documents and all these facts which shows that the dispute between the parties is primarily a civil dispute.

Learned counsel for the petitioner has further referred to the joint statement dated 26.05.2020 which has been signed by the petitioner and the complainant Manbir Singh and a perusal of the same would show that there was a monetary transaction between the two and the accounts have to be settled. It is further pointed out that the said joint statement is also annexed with the reply filed by the complainant as Annexure R-5 (page 121 of the paper book).

This Court has heard learned counsel for the parties and has perused the paper book.

The petitioner was granted interim protection on 30.10.2020 by a coordinate Bench of this Court and has joined the investigation and there

is no allegation that the petitioner has misused the concession of interim bail. The plea of the petitioner is that it is from his account, one FDR amounting to Rs.28,72,000/- has been prepared in favour of XEN Water and Services Division, Hansi, which was released on the request of the petitioner to the department and the same carries the signatures of the petitioner and the FDR was drawn in the account of the present petitioner. The said plea stands substantiated from paragraph 9 of the affidavit dated 08.03.2022 which has been reproduced hereinabove. It is further the plea of the petitioner that the present dispute is a civil dispute and even as per the joint statement relied upon by both the parties, there is a monetary transaction between the petitioner and the complainant and the said statement has also been relied upon by the complainant in his reply dated 07.03.2022 as Annexure R-5. The case of the State and the complainant, on the other hand, is that since there was no privity of contract between the petitioner and the department, thus, the petitioner was not entitled to get the security amount released. The said aspect would be finally adjudicated during the course of trial and this Court does not wish to opine on the merits of the same as the same would prejudice the case of either of the parties during the trial. The fact that the petitioner has been on interim bail since 30.10.2020 and has not misused the said concession and that the entire dispute is based on documentary evidence entitles the present petitioner for concession of anticipatory bail and accordingly, the present petition is allowed and interim bail dated 30.10.2020 is made absolute.

Nothing stated above shall be construed as an 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 petition.

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

August 23, 2022
Davinder Kumar

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