IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201/3 **CRM-M- 38756 of 2020**
Date of Decision: 21.09.2022

Naveen Bakshi

....Petitioner

Versus

State of Haryana and others

.....Respondents

2) **CRM-M- 38977 of 2020 (O&M)**

Rahul Gupta

....Petitioner

Versus

State of Haryana and others

.....Respondents

3) **CRM-M- 39785 of 2020**

Manish Sharma and another

....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Gautam Dutt, Advocate,
for the petitioner in CRM-M- 38756 of 2020.

Mr. Narender Hooda, Sr. Advocate, with
Mr. Sudhir Kumar Hooda, Advocate,
for the petitioner in CRM-M- 38977 of 2020.

Mr. M. Sharma, Advocate, for
Mr. Balkar Singh, Advocate,
for the petitioner in CRM-M-39785 of 2020.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana

Mr. Vikas Gogne, Advocate, and
Mr. Manav Bajaj, Advocate,
for the complainant in CRM-M-38977 of 2020.

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JASGURPREET SINGH PURI, J. (Oral)

All the three cases in which the prayer for anticipatory bail has been made are taken up together since they arise out of the same FIR with the consent of learned counsels for the parties for the sake of brevity.

The facts are being taken from CRM-M-38756 of 2020. The allegations contained in the FIR No. 0234 dated 27.09.2020, under Sections 120-B, 408, 420 IPC (Section 467 IPC added later on), registered at Police Station Udyog Vihar, District Gurugram, which was lodged on the basis of a complaint made by the complainant were that he has a strong suspicion of financial misappropriation and fraud in his company, which is a Private Limited Company, in which the complainant, his wife and his mother were the Directors. The allegations were made against three persons namely Rahul Gupta i.e. the petitioner (in CRM-M-38977 of 2020), who was stated to be the head of the operation, Naveen Bakshi i.e. the petitioner (in CRM-M-38756 of 2020), who was stated to be the head finance and one Manish Sharma i.e. petitioner No.1 (in CRM-M-39785 of 2020), who was stated to be working as Assistant Manager to the aforesaid Naveen Bakshi in the same department. The allegations were with regard to siphoning of money of the company, concealing and misappropriation of the accounts by using the ID in the software of another employee. As per the complainant, they themselves got preliminary investigation conducted internally from where it was found that there were fraudulent entries made on 15.06.2020 for an amount of INR 37,03,354/- and 02.07.2020, INR 15,18,750/- in the financial books of accounts of his company maintained in the software. He also expressed fear that many more such wrongdoings may have been done in the past years, and therefore, allegations of misconduct and misappropriation have been made against the aforesaid three persons who are the present petitioners in all the three cases.

At the outset, the learned State counsel has stated that all the three petitioners have joined the investigation, but they are not fully cooperating with the investigation process.

Mr. Gautam Dutt, Advocate appering on behalf of the petitioner namely Naveen Bakshi (in CRM-M-38756 of 2020) submitted that it is a case where there was an allegation of misappropriation of the accounts of the company namely M/s Corporate Flyers Pvt. Ltd. and the complainant and his family members are the owners of the company which is a Private Limited Company. The present FIR has been lodged purely on the basis of strong suspicion which is reflected from the FIR itself and the foundation of such suspicion was an internal preliminary enquiry conducted by the company itself and that too without associating the present petitioner in this regard. He further submitted that on the basis of mere suspicion, the present petitioner has been roped up in the present FIR which is an abuse of the process of law. He also submitted that a perusal of the FIR would show that the name of the petitioner Naveen Bakshi appears only in the starting of the FIR whereby the complainant has stated that the alleged misappropriation was done by the other co-accsued namely Rahul Gupta (petitioner in CRM-M-38977 of 2020) and it could have been done either by him or both of them and the other co-accused namely Manish Sharma (petitioner No. 1 in CRM-M-39785 of 2020) could be associated but so far as the present petitioner Naveen Bakshi is concerned even as per the FIR, there was no role attributable to him.

He further referred to Annexure P-3, which is an email dated 18.04.2020 which is a policy decision taken by the company itself that due to Covid-19 panedemic the company is in economic crisis and so they should take appropriate dues from the company and it was in the nature of invitation to severe relationship with the company in a healthy manner or by making a kind of golden handshake. The learned counsel further referred to Annexure P-4 whereby in pursuance of the aforesaid policy decision of the company, the petitioner Naveen Bakshi on 16.06.2020 submitted his resignation from the company with effect from 01.04.2020 and has stated in the resignation that he would like to be relieved with immediate effect. He further submitted that when the SIT was constituted in the present case for the purpose of investigating the case, it was found that the entries pertaining to embezzlement were on 20.06.2020, but on that date he was not an employee of the company and he already stood relieved in pursuance of his resignation and therefore there was no occasion for him to have committed any act of misappropriation on 20.06.2020 which has been alleged by the complainant. He further submitted that the entire allegations pertain to the documents and the software and in fact all the records including computers and laptops are already with the police for the purpose of investigation and therefore the petitioner is entitled for the grant of anticipatory bail more particularly when he has already joined investigation.

Mr. Narender Hooda, learned senior counsel assisted by Mr. Sudhir Kumar Hooda, Advocate, appearing on behalf of the petitioner Rahul Gupta (in CRM-M-38977 of 2020) submitted that the petitioner was working as a Director Operations in the company of the complainant which is a travel agency, in which the complainant is the Managing Director which is a Private Limited Company having three directors including his wife and mother. He submitted that the petitioner is not the director of the company but his designation is in the hierarchy of the company as Director Operations. He further pointed out to the FIR to state that the contents of the FIR are totally vague and no specific allegations have been alleged and is only based on suspicion which is reflected from the FIR itself. The learned senior counsel further referred to Annexure P-14 in his petition to submit that the allegations qua the petitioner gets nullified after the perusal of Annexure P-14 which the petitioner had filed alongwith his petition that when the complaint was received by the police then the petitioner fully cooperated with the police and the matter was before the Economic Wing Section wherein he had given a detailed explanation with regard to his role in the company regarding the aforesaid apprehension made by the complainant. He further referred to paragraph 2 of the aforesaid Annexure P-14 and submitted that in fact the business of company was pertaining to travel agency and tickets etc. which were sold to different clients and the complainant has gained lot of reputation and many times the transaction was made in cash wherein the bills were not issued at all under the directions of the complainant himself. He submitted that after the Covid-19 pandemic the business of the company was decreased and it was due to this reason, the complainant wanted to get rid of the employees and the present FIR was lodged. He also submitted that in fact it was the complainant himself who abused the process of law while violating the provisions of taxation laws and had been receiving money by way of cash from various persons and in case an investigation is ordered with regard to the same, the complainant himself shall become guilty for the same. The learned senior counsel again reiterated by submitting that the company took a policy decision to close its operation due to Covid-19 pandemic and since the petitioner was demanding outstanding dues from the complainant, it was only to suppress the claim of the complainant that the present FIR was lodged. The learned senior counsel further submitted that even one of the main allegations pertaining to the amount was that it was taken from one Ms. Timsy Anand regarding which the police has not even investigated this issue and even statement of the aforesaid lady has not been recorded and the aforesaid lady had been giving business to the company to the tune of Rs.50,00,000/- per year and such transactions were in violation of the taxation laws for which the complainant himself was liable. He further submitted that the allegations are pertaining to the financial dispute and the petitioner was only an employee of the company and otherwise also the matter is civil in nature which has been given criminal flavour in order to suppress the claim of the petitioner for getting his dues.

The case of the petitioner namely Manish Sharma (in CRM-M-39785 of 2020) was that he was only an Assistant Manager of the other co-accused namely Naveen Bakshi and otherwise also he has got no role to play since the allegations pertain to other co-accused and not to the present petitioner.

The learned counsels appearing on behalf of the petitioners in all the three petitions submitted that all the petitioners were granted interim bail by this Court vide orders dated 24.11.2020, 27.11.2020 and 01.12.2020 respectively. They further submitted that in pursuance of the aforesaid orders, the petitioners have already joined the investigation and they have fully cooperated with the investigation process and have further submitted that the entire documents, software and hardware are already with the police and therefore, have prayed that the interim orders passed by this Court may be confirmed.

On the other hand, Mr. Ranvir Singh Arya, learned Addl. Advocate General, Haryana has submitted that an affidavit has been filed by the State in CRM-M-38977 of 2020 and while referring to paragraph 9 of the affidavit, he submitted that after the interim bail was granted by this Court to all the petitioners, all of them have joined investigation. He has however opposed the confirmation of the bail to the petitioners on two grounds. Firstly, the disputed amount is yet to be recovered from the petitioners and secondly, there were some fake bills prepared by the petitioners which were sent through the Whatsapp of petitioner Rahul Gupta to Ms. Timsy Anand but nothing has been disclosed with regard to the fake bills and the address and contact number of the aforesaid Ms. Timsy Anand has not been provided by the petitioners.

However, at this stage, replying to the arguments raised by the learned State counsel, it was argued by the learned counsels for the petitioners that so far as the objections pertaining to the recovery of the amount is concerned, it cannot become a ground for denial of bail to the petitioners since it is a settled law that the police cannot become recovery agents and if at all there is disputed amount involved then the remedy lies with the civil Court. They further submitted that so far as the second objection with regard to non supplying of the address of aforesaid Ms. Timsy Anand is concerned, they submitted that in fact the aforesaid Ms. Timsy Anand was a permanent client of the complainant himself for the last 20 years and had been giving business to him to the tune of Rs. 50,00,000/- per year and they have a well established business in Gurugram and Delhi and therefore such a ground that the petitioners have to supply the address of Ms. Timsy Anand on the face of it, is not sustainable.

Mr. Vikas Gogne, Advocate and Mr. Manav Bajaj, Advocate, appearing on behalf of the complainant have submitted that the petitioners do not deserve the concession of anticipatory bail on the ground that there has been an embezzlement by all the petitioners with regard to the company belonging to the complainant and during internal enquiry, it was found that the petitioners had been taking money from different clients and getting them deposited in their own accounts either by themselves or by transfer and they did not deposit the money with the company, with the result that it had caused loss of about Rs.4 crores to the company and therefore the petitioners do not deserve the concession of anticipatory bail.

At this stage, Mr. Hooda, learned senior counsel appearing for the petitioner in CRM-M-38977 of 2020 referred to Annexure P-18 of the petition and while referring to the same submitted that in fact the complainant himself had issued a certificate that the petitioner Rahul Gupta is working in their company as a Director and he use to perform duties outside also. He required funds to perform his duties at the time of client meeting and for the purpose of travelling company is to maintain an imprest account with Rahul Gupta. The certificate further states that he is making payment through credit cards on behalf of the company and submits the expenditure account with the company. The learned senior counsel submitted that in fact the petitioner was authorised by the company itself to collect money on behalf of the company and was also authorised to spend the money on behalf of the company. He further submitted that be that as it may, it is a case where the complainant has raised a financial dispute between the employees of the company *vis-a-vis* the company itself which can only be a subject matter of a civil dispute.

I have heard the learned counsel for the parties.

As per the learned Addl. Advocate General, Haryana while referring to the affidavit filed by the State, he has submitted that all the three petitioners have already joined the investigation in pursuance of the respective orders of interim bail passed in their favour.

The two objections taken by the learned State counsel are that firstly, the petitioners have not refunded back the money to the company and secondly, the address of one of the clients namely Ms. Timsy Anand was not supplied by the petitioners to the police. So far as the first objection is concerned, the same is not sustainable in view of the fact that it appears to be a financial dispute and the arguments raised by the learned State counsel that for the purpose of recovery of money, the custodial interrogation of the petitioner is required, cannot sustain while considering the grant of anticipatory bail. The Court has to consider and strike a balance between the liberty of an individual on the one hand and on the other hand various other factors as to whether it can hamper the investigation or there is a possibility to influence any witness and such like factors. However, the facts of the present case suggest that the freedom of the petitioners would prevail over all the other factors given the facts and circumstances of the case. So far as the other objection raised by the learned State counsel that the address of one of the clients namely Ms. Timsy Anand was not supplied, is also not sustainable in view of the fact that as per the learned counsel for the petitioners, the aforesaid lady and her husband are having widespread business in Delhi and Gurugram and they have been clients with the complainant himself for the last 20 years and therefore such objection is also not sustainable.

In view of the aforesaid position, and especially considring the fact that all the petitioners have joined the investigation, this Court deems it fit and proper to allow all the three petitions and orders dated 24.11.2020, 27.11.2020 and 01.12.2020 are hereby made absolute.

However, anything observed hereinabove shall not be treated as an expresion of opinion on merits of the case and is only meant for the purpose of decision of these three petitions.

(JASGURPREET SINGH PURI)
JUDGE

September 21, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No