IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44418-2020
Date of Decision: 19.07.2022

(1)
Gagan Pal

....Petitioner(s)

Versus

State of Hayana

.....Respondent(s)

(2) **CRM-M-2222-2020**
Iqbal and another

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CRM-M-9671-2020

(3)
Pardeep Sharma and others

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CRM-M-44419-2020

(4)
Mandeep Sharma

....Petitioner(s)

Versus

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State of Hayana

.....Respondent(s)

CRM-M-44423-2020

(5)
Rajesh Kumar

....Petitioner(s)

Versus

State of Hayana

.....Respondent(s)

CRM-M-23868-2021

(6)
Nitish Saini

....Petitioner(s)

Versus

State of Hayana

.....Respondent(s)

CRM-M-34774-2020

(7)
Gurjeet and others

....Petitioner(s)

Versus

State of Hayana

.....Respondent(s)

CRM-M-46406-2021

(8)
Kulwinder Singh

....Petitioner(s)

Versus

State of Hayana

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.....Respondent(s)

CRM-M-48373-2021

(9)
Ramesh Chand

....Petitioner(s)

Versus

State of Hayana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Simranjeet Singh, Advocate,
for the petitioner(s) in CRM-M-2222-2020
and CRM-M-9671-2020.

None for the petitioner(s)
in CRM-M-23868-2021 and for the petitioner No.2
in CRM-M-34774-2020.

Mr. Vaneet K. Sharma, Advocate, for the petitioner(s)
in CRM-M-44418-2020, CRM-M-44423-2020,
CRM-M-44419-2020, CRM-M-46406-2021 and
CRM-M-48373-2021 & for petitioner No.3
in CRM-M-34774-2020.

Mr. Naveen Singh Panwar, DAG, Haryana.

Mr. Premjit Singh Hundal, Advocate for the complainant.

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JASGURPREET SINGH PURI, J. (Oral)

The present is a set of 9 petitions filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioners in FIR No. 33 dated 05.03.2019, under Sections 406, 420, 120-B IPC, registered at Police Station Sadhaura, City Yamuna Nagar, District Yamuna Nagar.

All the petitions arise from the same FIR and therefore the same are being up taken together for final disposal with the consent of learned

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counsels for the parties.

In all the petitions according to the learned counsel for the parties there is an interim order in favour of the petitioners.

For the purpose of considering the facts the petition filed by petitioner Gagan Pal in CRM-M-44418-2020 is taken up.

An FIR was lodged on 05.03.2019 under Sections 406 /420 /120-B IPC at Police Station Sadhaura, District Yamuna Nagar on the basis of complaint made by the Axis Bank by alleging that a fraud had taken place in the branch of the bank wherein some customers took a gold loan from the bank and as a security some gold ornaments were deposited by them in the bank All the ornaments/jewellery deposited by the customers were subjected to evaluation and assessment by M/s Harsh Jewellers through its proprietor Sanjay Kumar who is an empanelled jeweller of the bank. There were approximately 14 borrowers and the items of jewellery /ornaments which were deposited by them were verified and valuated by the aforesaid jeweller. During audit it was found that the jewellery which was deposited by the customers was not original gold and therefore, the present FIR has been lodged.

Mr. Simranjeet Singh, Advocate has appeared on behalf of the petitioners in CRM-M-2222-2020 and CRM-M-9671-2020 and Mr. Vaneet K. Sharma, Advocate has appeared on behalf of the petitioners in CRM-M-44418-2020, CRM-M-44423-2020, CRM-M-44419-2020, CRM-M-46406-2021, CRM-M-48373-2021 and CRM-M-34774-2020 and both the learned counsels for the petitioners have submitted that it is a case where the petitioners have given their gold jewellery and borrowed a sum of money

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from the bank by way of gold loan. The entire jewellery was properly verified and checked by a jeweller namely Sanjay who is the proprietor of M/s Harsh Jewellers and is an empanelled valuer of the bank itself and after proper verification of the same, the loan was advanced to the petitioners. Therafter, when the internal audit of the bank was done it was at the back of the petitioners and the allegation against the petitioner was that the gold was not genuine gold and was spurious. They further submitted that the purity of the gold may vary and it may be having a less purity of the gold but once it has already been subjected to a detail verification by a valuer who has been appointed by the bank itself and is a jeweller, then the petitioners cannot be held liable for the same in case there is any shortfall in the purity of the gold. They further submitted that be that as it may, the petitioners have already joined the investigation in pursuance of the orders passed by this Court and they have fully cooperated with the investigation process. The entire gold/jewellery/ornaments are already with the police and no recovery is to be effected from the petitioners and therefore, the petitioners may be considered for the grant of anticipatory bail.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has stated on instructions from SI Mansa Ram that in pursuance of the orders passed by this Court in all the petitions, the petitioners have already joined the investigation. He further submitted that however the recovery of the loan amount is yet to be effected from the petitioners. He further submitted that out of the total 14 petitioners in the present set of 9 cases, 2 of the petitioners namely, Kulwinder Singh and

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Gurjeet in CRM-M-46406-2021 and CRM-M-34774-2020 were not the borrowers but they were nominated on the basis of the disclosure statement of the valuer of the bank i.e. Sanjay on the ground that they were supplier of the fake gold. He further submitted that during the audit which was conducted by the bank, an assessment was also done by an independent jeweller namely Ananya Ornaments Pvt. Ltd., Gujarat which found that the jewellery was totally spurious and no gold content was found. The learned State counsel further submitted that thereafter the entire gold /jewellery /ornaments were sent to the FSL Laboratory, Madhuban for evaluation regarding the genuineness of the gold but the report of the same is still awaited. He further submitted that all the petitioners have joined the investigation but for the purpose of recovery of the loan amount, the custodial interrogation of the petitioners is required.

Mr. Premjit Singh Hundal, Advocate has also caused appearance on behalf of the complainant and has also opposed the grant of anticipatory bail to the petitioners. He submitted that it is a case where the petitioners in connivance with the empanelled jeweller of the bank have committed fraud upon the bank and obtained gold loan on the basis of spurious gold and the bank has suffered loss because of the fraud being committed by the petitioners and the amount of loan which was advanced to the petitioners is yet to the recovered. He further submitted that some of the borrowers who are not the petitioners have already returned the loan amount to the bank.

Replying to the arguments and objections raised by the learneed State counsel and the learned counsel for the complainant, it was

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argued by the learned counsels for the petitioners that in fact so far as the loan amount is concerned, the bank has already filed a civil suit against the petitioners for recovery of money and even one of the petitioner namely Gaganpal has also filed a civil suit against the bank for recovery of the gold so that the gold may be sold and the loan amount may returned back to the bank since according to the learned counsel for the petitioner the gold was not spurious. They further submitted that in this way the civil litigation for recovery is also pending inter se between some of the petitioners and the bank.

I have heard the learned counsel for the parties.

It is a case where the allegations against the petitioners were that they in connivance with one Sanjay Kumar, proprietor of M/s. Harsh Jewellers have obtained the gold loan from the Axis Bank by depositing some gold ornaments/jewellery. It is not in dispute that the aforesaid Sanjay Kumar who is also an accused in the present FIR and is still in custody was an empanelled jeweller of the bank itself who had verified and evaluated the gold items which were submitted by the petitioners for obtaining loan. Learned counsels for the petitioners have also referred to Annexure P-3 which is an undertaking given by one of the petitioners that the gold was genuine and of pure quality and it has also been stated in the said undertaking that in case the gold is found to be spurious or of lower quality/purity by the bank including during its audit, inspection or otherwise, then the borrower is aware that without prejudice to any other rights and remedies of the bank, the borrower shall also be liable to the consequences of misrepresentation. In the said document, the number of ornaments have

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been described in a tabulated form which depicts number of ornaments, nature of ornaments and the gross weight but there is nothing to show with regard to the purity of the ornaments in the table. The audit as well as the valuation done by the independent jeweller of Gujarat was done at the back of the petitioners. The said valuer namely Ananya Ornaments Pvt. Ltd. is a private valuator who has opined that the gold was totally spurious and thereafter, the ornaments have been sent to the FSL Laboratory as per the learned Deputy Advocate General, Haryana and the report of the same is still awaited. The learned counsels for the petitioners have taken categorical stand that the gold may be of less purity and it is yet to be ascertained by the FSL Laboratory as to what is the purity of the gold and no reliance can be placed upon the private valuator and that too when it was done in the absence of the petitioners.

As per the learned Deputy Advocate General, Haryana, all the petitioners have already joined investigation. The entire gold/jewellery is already with the police which according to the State counsel has been sent to the FSL Laboratory and therefore, no recovery is to be effected from the petitioners so far as the gold items are concerned.The only objection which has been raised by the learned State counsel as well as the learned counsel for the complainant was that recovery of the loan amount is to be effected and therefore, the custodial interrogation of the petitioners was required. This Court is of the considered view that the prayer for anticipatory bail cannot be denied only on the ground for recovery of the loan amount particularly in view of the fact that civil litigation with regard to recovery of the said amount by the bank is also pending. The petitioners are always

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bound by the conditions contained under Section 438(2) of the Cr.P.C. The FSL report has already been delayed and no time limit has been given by the learned State counsel as to when the FSL report may come. Therefore, in view of the aforesaid position, this Court is of the considered view that the petitioners cannot be denied the grant of anticipatory bail.

Consequently, all the 9 petitions are allowed. The order dated 01.01.2021 passed in CRM-M-44418-2020, order dated 20.01.2020 passed in CRM-M-2222-2020, order dated 05.03.2020 passed in CRM-M-9671-2020, order dated 01.01.2021 passed in CRM-M-44419-2020, order dated 01.01.2021 passed in CRM-M-44423-2020, order dated 15.09.2021 passed in CRM-M-23868-2021, order dated 13.01.2021 passed in CRM-M-34774-2020, order dated 03.11.2021 passed in CRM-M-46406-2021, order dated 18.11.2021 passed in CRM-M-48373-2021 are hereby made absolute.

19.07.2022 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking : Yes/No
Whether reportable : Yes/No

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