**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

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**CRM-M-49615-2021 (O&M)**
**Date of decision : 06.01.2022**

**Deepak Goyal**

**... Petitioner**

**Versus**

**State of Haryana**

**... Respondent**

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Randeep Rai, Senior Advocate with
Mr.Vipul Sharma, Advocate,
Mr.Vikash Garg, Advocate for the petitioner.

Mr. ManishDadwal, AAG, Haryana.

Mr. G.S.Sandhu, Advocate for the complainant.

(Through Video Conferencing)

**VIKAS BAHL, J.(ORAL)**

**CRM-209-2022**

This is an application under Section 4821 Cr.P.C. for placing on record Annexures P-3 to P-7.

The application is allowed. Annexures P-3 to P-7 are taken on record subject to all just exceptions.

**CRM-M-49615-2021**

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner pending trial in FIR no.22 dated 12.01.2021 registered under Sections 419, 406, 420, 467, 471, 120-B, 506 IPC at Police Station Sadar, Yamuna Nagar.

FIR in the present case was registered on the complaint of Abhishek Arora son of Mahesh Kumar against the present petitioner, Manoj Kumar Jain, Rajeev Kumar, Pawan Garg and Masoom Garg on the allegation that the complainant had opened a firm named Satyam Industries in the year 2014 in which, the Complainant and Manoj Kumar Dhingra were partners and the complainant had taken a loan from Punjab National Bank and had repaid the same and thereafter, had shifted their firm to Punjab and had started the business there after taking GST number. It has been alleged that the petitioner had met the complainant's father-Mahesh Kumar and informed that he could get loans sanctioned from financial institutions at a very low rate and thereafter, contacted the complainant and his father and stated that a new company has come into the market and could get the loan sanctioned. It has also been alleged that the petitioner alongwith two co-accused persons met the complainant and his father in the year 2018 and stated that they would visit the factory of the complainant to see the same and in pursuance of that, visited the factory in the end of 2018. It is alleged that the accused persons took many documents from the complainant and his partner including their PAN card, Voter card, Driving License etc. for getting the loan sanctioned and promised that they would get the loan sanctioned. It has further been alleged that for the said purpose, the complainant transferred money from the account of his mining firm to the account of the petitioner and that thereafter, the petitioner started dilly dallying the matter and did not take calls of the complainant and on account of the same, the complainant was apprehensive that the accused persons might misuse the documents of the complainant and his partner and for the said purpose, the complainant got prepared an MOU dated 21.03.2019, which however, was not signed by the Complainant as certain conditions were not acceptable to the complainant. It has been alleged that on 30.09.2019, the complainant shut down his firm and surrendered his GST number but however, about one week before the filing of the present complaint, the complainant received phone calls from Aditya Birla Firm and Axis Bank Noida, informing him that the complainant had taken a loan in the name of Satyam Industries and when the complainant checked his bank CIBIL, that transaction of 54 lacs was shown to be pending against the complainant from different banks and an amount of Rs. 2 crores was shown in the name of Satyam Industries whereas, the complainant had not taken any loan in the name of Satyam Industries and after inquiring, learnt that the accused persons had by representing themselves as the complainant and Manoj Dhingra, got the said loans sanctioned and since the complainant was frightened and nervous, he did not take action due to fear. It is further alleged that the accused persons in connivance with bank officials have forged signatures of the complainant and his partner and taken loans including a car on loan in the name of Satyam Industries and thereafter, the complainant got his PAN number blocked and had also sent a message via EMAIL to CIBIL, RBI etc. On the basis of the said allegations, the present FIR has been registered.

Learned senior counsel for the petitioner has submitted that in the present case, the FIR has been registered on 12.01.2021 and prior to the registration of the present FIR, a civil suit was filed on 11.03.2019

(Annexure P-4) by Satyam Industries through one of its partner. It is submitted that the complainant admittedly is a partner of the said firm M/s Satyam Industries. It has been highlighted that in the said suit, various pleas have been taken, however, no prayer for recovery of any money has been prayed for and that although, Manoj Kumar Jain is shown as the first defendant but the present petitioner is also one of the defendants in the said suit. It is argued that the fact that no recovery of money is being sought in the civil suit, would prima-facie show that even as per the version of the complainant, no money is due towards him moreso, from the present petitioner. It is further argued that even as per allegations made in the FIR, reference has been made to one MOU dated 21.03.2019 (Annexure P-5) and although in the FIR, it has been stated that the complainant has not signed the same but a perusal of the said MOU dated 21.03.2019 would show that the complainant is party no.1 in the same and is represented through his authorised signatory Mahesh Arora and Manoj Kumar Dhingra and the said Mahesh Arora is in fact the father of the said Abhishek Arora (complainant) and Manoj Kumar Dhingra is the partner of the complainant. It is further argued that neither in the FIR nor in the challan, it has been disputed that the said Mahesh Arora has not signed the said MOU. By referring to the said MOU dated 21.03.2019, it has been highlighted that in fact the present petitioner is not a party to the said MOU and has nothing to do with the alleged dispute between the complainant Abhishek Arora and Manoj Kumar, co-accused of the petitioner. It has further been submitted that from a perusal of the clauses of said MOU, it is apparent that there were business dealings between the said Abhishek Arora (complainant) and co-accused Manoj Kumar inasmuch under sub clause (ii) Abhishek Arora had agreed to transfer the shareholding of the firm M/s Satyam Industries to Manoj Kumar, co-accused of the petitioner for a consideration which has been mentioned in the said MOU. Clause (vii) of the said agreement has also been highlighted to argue that after the execution of the said agreement, the said Manoj Kumar was authorised to approach any financial institution as a partner of the firm in order to arrange funds for running of the said firm and also to arrange documents required by the financial institution and the complainant would provide the documents for the same. As per clause (viii), the second party, i.e. Manoj Kumar (co-accused) was free to apply for GST in Delhi or any other State. As per clause (ix), the dispute between the parties was to be resolved and cases were to be withdrawn. It is submitted that a perusal of the FIR and the challan would show that there seems to be a dispute with respect to the implementation of the said MOU on account of which, the present FIR has been registered. It is submitted that in fact the petitioner is neither a party to the said agreement nor in any way involved in the transaction which might have taken place between the complainant and Manoj Kumar (co-accused) and not even a single rupee has come into any account of the petitioner with respect to the same. It is further submitted that there is no material in the entire report under Section 173 Cr.P.C. to even remotely show that the petitioner had committed any forgery of any document or had obtained any loan on behalf of Satyam Industries or the complainant and not even a single document has been highlighted which might have been prepared by the petitioner fraudulently for obtaining the loan illegally. It is further argued that even a perusal of the FIR would show that the complainant wanted to engage in business dealings with the accused persons and wanted to get a loan sanctioned for which, certain documents have been handed over to the accused persons. It is further submitted that general and vague allegations have been made without specifying the role of the petitioner in the report under Section 173 Cr.P.C.

Learned senior counsel has been fair enough to highlight the allegations which have been made against the petitioner in the challan and has made submissions regarding the same. The first allegation which has been highlighted is to the effect that during the enquiry it had been found that in the year 2018, the petitioner had taken Rs.30 lacs in cash from Satyam Industries, Yamuna Nagar, so he could provide them a business loan. With respect to the said allegation, it is submitted that there is no document on record much less, any receipt to even remotely show that said amount of Rs.30 lacs was taken by the petitioner. It is submitted that neither the month nor the date on which the said amount had been paid, has been mentioned in the challan and it has been argued that it is impossible to believe that a person would pay an amount of Rs.30 lacs in cash without even seeking any receipt for the same moreso, when the petitioner is not earlier known to the complainant. With respect to the second allegation against the petitioner to the effect that Rs.1.80 crores were transferred by the complainant from the firm Goverdhan Mines into the account of Monu Enterprises, it has been stated that said Monu Enterprises is a sole proprietorship of Manoj Kumar Jain (co-accused) and present petitioner has nothing to do with the same. Further reference has been made to challan (page 19) of CRM-209-2022 to show that even as per the prosecution version, an amount of Rs.59,35,000/- was transferred back to the firm Goverdhan Mines. It is highlighted that the above clearly shows that there were transactions in pursuance of the MOU dated 21.03.2019, between the complainant's firm and Manoj Kumar. The third allegation which has been highlighted by the Learned Senior Counsel against the petitioner is at page 14 of the CRM-209-2022 and is to the effect that the petitioner had withdrawn a sum of Rs.62,50,000/- from IDFC First Bank Chet Pet Chennai. It is argued that even with respect to the said allegation, there is nothing on record to even remotely substantiate the same. It is submitted that none of the bank officials have been arrayed as an accused in the present case and it is impossible to believe that a person could withdraw money from a bank without the connivance of the bank officials. It is further submitted that the said allegation is a bald allegation without even mentioning the details as to when the said amount was taken nor there is any documentary proof in support of the same. The fourth allegation which has been highlighted is at page 16 of CRM-209-2022,as per which the petitioner along with Manoj Kumar Jain and Rajesh Kumar had taken a loan of Rs.30 lacs from Landing Kart Finance Company, Gurugram, in December 2018. With respect to the same, it has been submitted that even a perusal of the civil suit filed by Satyam Industries of which, the complainant is a partner, would clearly show that as per averments made in para 10 of the application under Order 39 Rule 1 & 2 read with Section 151 CPC, it has been submitted that the plaintiff firm therein, i.e. Satyam Industries had deposited the loan amount taken from the Lendinkart Finance Ltd. on 22.02.2019. It is argued that as per the terms and conditions of the MOU dated 21.03.2019, the said Manoj Kumar Jain (co-accused) was entitled to approach any financial institution to arrange funds for running of the said firm and if any such loan had been taken by Manoj Kumar Jain, then the same would be in pursuance of the rights conferred to him under the MOU dated 21.03.2019. It is submitted that the petitioner is not even a party to the said MOU and no money has come into his account. It is further submitted that at any rate, the entire dispute has arisen out of a commercial transaction between the complainant and the co-accused Manoj Kumar and is based on documentary evidence and the matter is pending before the civil court and it is the civil court which, after considering all the documents and after giving due opportunity to all the parties cross-examine all the witnesses, would finally adjudicate the matter. It is further submitted that the petitioner has been in custody since 03.08.2021 and the challan in the present case has been presented on 23.09.2021 against the petitioner and the present case is triable by the Magistrate and thus, no purpose would be served in keeping the petitioner in custody and thus, a prayer for allowing the present petition has been made.

Learned State counsel, on the other hand, has submitted that the details of the loans which have been taken by Manoj Kumar Jain in connivance with the present petitioner and the other co-accused has been detailed at page 20 of CRM-209-2022. It is further submitted that the said loans have been illegally taken and the petitioner is also involved in getting the said loans sanctioned. It is argued that by virtue of said act, the petitioner along with other co-accused had duped the complainant of an amount of Rs.1,78,50,000/-. It is further argued that the petitioner is involved in several other cases and thus, does not deserve the concession of regular bail.

Learned counsel for the complainant has also opposed the present application for regular bail and has submitted that the complainant was abroad from 13.03.2019 to 09.07.2019 and large number of loans were obtained from various financial institutions when the complainant was abroad. It is also reiterated that the petitioner is involved in several other cases and thus, does not deserve the concession of regular bail. It is further submitted that in the FIR, Abhishek Arora has specifically denied that he has signed MOU dated 21.03.2019, however learned counsel could not show that in the FIR or in the challan, there are allegations that Mahesh Arora has not signed the said MOU dated 21.03.2019 or that his signatures are forged.

Learned senior counsel in rebuttal has submitted that in all other cases, the petitioner is on bail and has relied upon the judgment of Hon'ble Supreme Court in "***Maulana Mohd. Amir Rashadi vs. State of U.P. and another",*** reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The learned senior counsel has further submitted that there is nothing on record to suggest that the petitioner would flee away from the jurisdiction of the court. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."*

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

It is not in dispute that in the present case, the civil suit on behalf of Satyam Industries had been filed prior in time to the registration of the present FIR. No reference to the said civil suit has been made in the FIR or in the challan. It is not in dispute that in the said suit, no prayer for recovery of money much less, from the present petitioner, who is also one of the defendants in the suit, has been made. Thus, it is apparent that the present case has civil trappings and the matter can be effectively and properly adjudicated after all the parties get opportunity to lead evidence and also cross-examine the witnesses. In the FIR there is a reference to the MOU dated 21.03.2019 and although, the complainant has averred that the said MOU was not signed by the complainant but a perusal of the said MOU (Annexure P-5) would show that the complainant has entered into the said MOU through his authorised signatory Mahesh Arora, who is father of the complainant. There is no allegation either in the FIR or in the challan to the effect that Mahesh Arora has not signed the said MOU or that the signatures of Mahesh Arora are forged. The relevant part of the said MOU is reproduced hereinabelow:-

> "*UTTAR PRADESH EN816478*
>
> *MOU*
>
> *This MOU has been executed on stamp papers of Rs. 100, stamp No. EN 816477 and EN 816478 on dated 21/03/2019, one is original copy ( Stamp No EN-816477) and other duplicate copy is on( Stamp No EN-816478), between:*
>
> *Abhishek Arora S/o Mahesh Arora R/o 959, Sector-17, Hudda, Jagadri,Yamuna Nagar, Haryana through its authorized signatory Mahesh Arora and Manoj Kumar Dhingra S/o Govinda R/o 72C, Ganga Nagar, Rajasthan.*
>
> *AND*
>
> *Sh. Manoj Kumar S/o Ramesh Chand Jain R/o 1004, Solitare Building, Paramount, Crossing Republic, Ghaziabad -201016 and Rajesh Kumar S/o Sant Ram R/o 005, Buland Society, Crossing Republic , Ghaziabad -201016.*
>
> *AND*
>
> *M/s Satyam Industries Pan No ACOFS4549L. Office Add. Village Khatti, Hoshiyarpur Road, Phagwara, Punjab.*
>
> *That the above said parties are entering into the said MOU amicably and on their free will.*
>
> *Whereas the First Parties are the shareholders (50% each) and promoters of the company namely M/S SATYAM INDUSTRIES.*
>
> *That the First Parties wants to transfer his share holdings of the firm namely M/s SATYM INDUSTRIES. That the Second Party are ready to take over the said firm by way of transferring the shareholding of the partners and the same MOU withstands on the following terms:*

*i)That the said firm Namely M/S SATYAM INDUSTRIES is running from 2014 and was formed by the first parties.*

*ii)That the first parties agreed:-*

*1)To transfer the shareholding of the said firm M/s Satyam Industries to the second parties.*

*2)To clear the liability of Goverdhan Mines towards M/s Mano Enterprises proprietor Manoj Kumar Jain as a full and final. The terms of the settlement of the Goverdhan mine has been accepted by Mr. Abhishek Arora (Partner in Goverdhan Mines.)*

*3) To Clear the Loan liability of BG, CC LIMIT .CAR loan from PNB bank, Model Town, Yamuna Nagar, limit from NSIC and the business loan of 20 Lacs from HDFC bank whose EMI is 70701/-.*

*iii) That to clear the above said liability of (ii) para the second parties agreed to pay the amount of Rs. 265 lacs to the first parties in the bank account of either M/s Satyam industries, Abhishek Arora or Manoj Kumar.*

*iv)That the First Party agreed to clear all the above described financial liabilities in para (ii) on the said firm on or before the clearance of the PDC, handed over to the partners of the firm or as mutually agreed.*

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*vii)That after Signing this MOU the second parties will free to approach any financial institution as a partner of the said firm to arrange the funds for running the said firm and they will also free to arrange the documents required by the Financial Institution or the first parties will provide the documents for the same."*

A perusal of the above-reproduced clauses of the MOU would show that there were business / commercial transactions between the complainant-Abhishek Arora and co-accused Manoj Kumar. The petitioner is not a party to the said MOU which also prima-facie shows that the petitioner is alien to the dispute between Abhishek Arora and Manoj Kumar. As per the clauses of the MOU, the complainant was to transfer the shareholding the shareholding of M/s Satyam Industries to Manoj Kumar (co-accused). Importantly as per clause (vii), the said Manoj Kumar was free to approach any financial institution as a partner of the said firm to arrange the funds for running the said firm and was also free to arrange documents required by the financial institution and also to apply for GST in Delhi or any other State.

The argument of learned senior counsel for the petitioner to the effect that the loans might have been taken by Manoj Kumar in pursuance of the said MOU dated 21.03.2019, cannot be brushed aside. The said matter would be finally adjudicated during the trial before the civil court. The argument of learned senior counsel for the petitioner to the effect that not even a single rupee has been credited into any of his accounts, has not been rebutted before this Court. Even the argument of learned senior counsel for the petitioner to the effect that the allegation with respect to the payment of cash to the petitioner is vague and cannot be believed, as neither any receipt regarding the same has been produced on the record nor the month or the date of the payment has been mentioned, cannot be brushed aside. In the present case none of the bank officials have been arrayed as an accused and it is difficult to visualise as to how without the connivance of the bank officials, a person could get loan sanctioned in the name of another person and get the money transferred from the bank to an account which does not belong to the complainant. In the present case, as stated above, no amount has been shown to have been credited into the account of the present petitioner. No material has been highlighted to show that any document has been forged by the petitioner. At any rate, this Court does not wish to give any final opinion with respect to the genuineness of the case of the complainant or the defence of the petitioner, as the same would be matter of trial but keeping in view the fact that the petitioner has been in custody since 03.08.2021 and the challan in the present case has already been filed against the petitioner and the entire dispute in the present case is based on documentary evidence and civil suit is already pending between the parties and the present case is triable by the Magistrate and the trial is likely to take time, moreso, in view of the present pandemic and also, in view of the law laid down by the Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi's***case (supra), the present petition for regular bail is allowed and and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

**N**othing stated above shall be construed as a final 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.

**January 06, 2022** **(VIKAS BAHL)**
*Pawan/Davinder* **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

PAWAN KUMAR
2022.01.08 15:07
I attest to the accuracy of this order
Chandigarh