

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

208

(i) CRM-M-46642-2022
Date of decision : 09.11.2022

Sahil Petitioner

V/S

State of Haryana Respondent

(ii) CRM-M-47779-2022
Date of decision 09.11.2022

Mukesh Kumar Petitioner

V/S

State of Haryana and another Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Ram Singh Chaudhary, Advocate
for the petitioner in CRM-M-46642-2022.

Mr. Ankur Lal, Advocate
for the petitioner in CRM-M-47779-2022.

Mr. Munish Sharma, Asstt. A.G., Haryana
for the respondent-State.

Mr. Archit Kaushik, Advocate
for the complainant.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioners have filed the present petitions under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.209 dated 07.09.2022 registered under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code, 1860 at Police Station Sector-6, Dharuhera, District Rewari.

The above-said FIR was registered on the basis of

complaint moved by complainant Arun Sehrawat alleging that his company has been indulged in the business of giving manpower. The meeting between him as well as his co-Director Neeraj Dahilya and Nitin Pandey, Satyapal Mehra and Balbir Singh has been held by Kamal Kishore, HR, Shiv Engineering/SBD Auto's Kapriwas. Thereafter on 04.01.2022 an agreement has been executed between them and on 05.01.2022, they have received an email from hr@shivengineering.com for giving salary to 92 persons to the tune of Rs.11,10,150/- and the complainant party have transferred the said amount in January, 2022 from their ICICI Bank. Thereafter, they asked Kamal Kishore to get the KYC done of the concerned persons but he put off the matter for one month. Regarding the salary of month of January, 2022, Kamal Kishore stated to them that he has get the same done from the account of the company and he asked them to give cheque, upon which the complainant party transferred Rs.4,22,382/- on 21.01.2022, Rs.4,26,501 on 29.01.2022 and Rs.9,08,120/- on 22.02.2022 (total Rs.28,67,153). When the complainant party demanded the money back, they have not received any satisfactory reply and in the next month, the accused have issued two cheques amounting to Rs.28,00,000/- and Rs.17,00,000/-. When the bill has been sent on the email ID accounts@shivengineering.com, then Raj Kumar Yadav had made a call to them that their company has not been indulged in such like of business. When the complainant party tried to talk with Kamal Kishore, then he has not given any satisfactory answer.

When the complainant party presented both the cheques in the bank

then both the cheques have been dishonoured. Thereafter, the complainant party came to know that Kamal Kishore had committed cheating with many person.

Learned counsel for petitioners submit that the petitioners have been falsely implicated in the present case. There is no legal or admissible evidence against the petitioners. No offence is made out against them. No recovery has been effected from them. Whatever transactions were carried out by the complainant/victims, they were carried out at the instance of Kamal Kishore. Not even a single penny was fraudulently acquired by the petitioners. The entire matter is based on the documentary evidence and the said documents are already in possession of investigating agency. The offences are triable by the Court of Magistrate. The petitioners are not involved in any other case. The petitioners are ready and willing to join the investigation.

On the other hand learned State counsel and learned counsel for the complainant has opposed the present petition in terms of status report filed by the State which are taken on record.

I have heard learned counsel for the parties and perused the record.

As per the status report, the petitioners along with co-accused had committed fraud with six another firms in the same way. During investigation it was found that the petitioners have committed fraud of total amount of Rs.95,00,000/- with different-different firms. The petitioner-Mukesh Kumar was a labour contractor in Shiv Engineering and SBD Auto's company at Kapriwas and he opened the account of 92 persons in Karnataka Bank at Bhwadi while taking all the

documents of employees and kept the ATM card and pass book of the above-said accounts. The modus operandi of petitioner-Mukesh Kumar was that he used to transfer the salary of the employees twice or thrice in a month and the same amount was withdrawn by him and his co-accused from the account of the employees by saying that some new employees are recruited and their bank account are not operating therefore, their salary have been transferred in the account of present employees and this way he took the ATM card of the employees to whom the salary was transferred in twice or thrice in a month.

As far as petitioner-Sahil is concerned, he was the clerk of Mukesh Kumar. He was also transferred amount of Rs.9,68,108/- in bank account of co-accused Kamal Kishore from his account and withdrew the amount of Rs.5,72,100/- from his account and also spent Rs.70,000/- by using his credit card. He has salary account at Karnataka Bank at Bhiwadi, Rajasthan in which he getting salary of Rs.15,000/- per month. He was getting Rs.15,40,208/- from the bank account of victims as well as from the account of both company.

Both the petitioners were beneficiary and played an active role to cheat the other firms. Their custodial interrogation is required for thorough investigation of the case and for recovery of the ATM cards, pass books and other relevant documents of 92 account holders.

It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in

State Vs. Anil Sharma : (1997) 7 SCC 187 held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case, point towards the complicity of the petitioner and thus custodial interrogation of the petitioner is necessary and would not amount to the violation of petitioner's right under Article 21 of the Constitution.

Keeping in view the above facts as well as nature of the offence, the petitioners do not deserve the concession of anticipatory bail. Hence, the present petitions are hereby dismissed.

09.11.2022

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No