

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

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**CRM-M-54232-2022 (O&M)
Date of decision: 22.11.2022**

Amit Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. J.P. Sharma, Advocate for the petitioner.

Mr. Pawan Kumar Jhanda, AAG Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Prayer in the petition is for cancellation of anticipatory bail grant to respondent Nos. 2 and 3 vide orders dated 27.09.2022 and 17.10.2022 passed by the Additional Sessions Judge, Rewari, in case bearing FIR No. 329 dated 15.09.2022 registered under Sections 406, 420, 506, 34 IPC at Police Station Kasola, District Rewari.

Learned counsel for the petitioner submits that while granting the anticipatory bail to respondent Nos. 2 and 3, the learned Additional Sessions Judge, Rewari, has not applied his mind; that the complainant is Director of M/s Shipivista Indators Pvt. Ltd.; that an agreement to sell for sale of machinery and plant of plot No. 2 for a total sale consideration of Rs. 12.25 crore was executed by respondent No.2-Tavinder Singh with the complainant on 16.12.2020; that at the time of execution of the said agreement, it was shown that the plant/machinery is without any encumbrances and Rs. 35 lakh was received by the accused and remaining amount of Rs. 1 crore was received through RTGS on 14.12.2020; that the accused has to hand over the no due certificate regarding the debt of plant and machinery for the period

upto 30.12.2020; that instead of giving no due certificate, on 17.01.2022 the accused given beatings to the security guards deputed by the complainant for the security of the machinery and ousted both the security guards from the plant and that thereafter, the complainant came to know that the plant and machinery had already been hypothecated with some another company/agency prior to the agreement dated 16.12.2020.

I have heard the learned counsel for the petitioner and have also gone through the documents on record.

While allowing the bail application of respondent Nos. 2 and 3, learned Additional Sessions Judge, Rewari, has discussed about the contentions raised by the learned counsel for the petitioners/respondent Nos. 2 and 3 and the complainant, the relevant Paras are as under:-

“5. Ld. counsel for the accused has submitted that the police has registered a false and frivolous case against the applicants, in-fact, they are innocent persons and have not committed any offence. The present case has been got registered by the complainant on totally false and baseless facts by concealing material facts and has not approached the investigating agency with clean hands. The applicants had never misappropriated any amount of the complainant and they never cheated him at any point of time. The agreement dated 16.12.2020 and payment are not disputed and after the said agreement, the complainant had purchased scrap from M/s Omax Auto Limited from 20.03.2021 till 17.06.2021. Out of the amount, on request of complainant, some of the amount has been adjusted from the deposited money. Upon receipt of the representation made by the complainant, M/s Omax Auto Limited adjusted Rs. 2951921/- from the balance amount of Rs. 7951921/- and after adjustment of the aforesaid amount, only a sum of Rs. 50,00,00/- of the complainant remained with M/s. Omax Auto Limited. Thereafter, on 01.03.2022, another agreement for sale and removal of machineries and its accessories was executed between M/s Omax Auto Limited and M/s Corelogix Consulting India Pvt. Ltd and at that time, a board resolution was passed by the complainant firm, as per which, remaining amount of Rs. 50,00,000/- was to be adjusted in the account of M/ s Corelogix Consulting India Pvt. Ltd. After adjustment of the balance amount, no amount of the complainant remained to be due with M/s. Omax

Auto Limited. The complainant intentionally suppressed the subsequent agreements in order to mislead the investigating agency and to cause unnecessary harassment to the company of the applicants. The antecedents of the complainant are highly doubtful and even earlier on 08.08.2022 at about 12.48 PM, he along with his four/five musclemen had forcibly tried to trespass into the corporate office of M/s. Omax Auto Limited, but he was not allowed to enter and thereafter, on 09.08.2022, he again come to the said office along with three/four musclemen and they have created a ruckus in the office of M/s. Omax Auto Limited and threatened their officials with dire consequences regarding which a detailed application was moved by applicant Tavinder Singh to DCP, Sadar, Police Station Gurugram. The entire incident was recorded in the CCTV cameras installed in the company of the applicants. No offence whatsoever is made out against the applicants since they had never cheated the complainant. The complainant had also approached NCLT regarding similar subject matter and this fact has also been concealed by the complainant in the FIR. The ingredients of cheating are completely missing in the complaint. The chain of events, different agreements for sale and removal of machineries clearly show and suggest that no offence is made out against the applicants. Applicant no. 2 is not the signatory to the agreement of sale and removal of accessories dated 16.12.2020, so no offence is made out against him and it is admitted case of the prosecution that he was not present at the time of execution of said agreement. He never met the complainant, so question of applicant no. 2 cheating or inducing the complainant does not arise at all. The FIR is registered after much delay. In-fact, the investigating agency had associated the applicants during inquiry and had recorded the statement of applicant Tavinder Singh. As per initial inquiry, the DPA had categorically opined that no criminal offence is made out against the applicants. The present case solely rests on documentary evidence and nothing is to be recovered from the applicants, they had already been associated in the investigation, so their custodial interrogation is not warranted. Even if the version of the prosecution presumes to be true for the sake of arguments, even then no criminal offence is made out against the applicants as the dispute is of totally civil in nature. The applicants will abide by all the terms and conditions of the bail and they are ready to join the investigation. Therefore, they may be released on bail. Whereas the bail application has been opposed by learned PP for State assisted by learned counsel for complainant.

6. Learned counsel for complainant has further argued that the accused have committed cheating with the complainant as they have not supplied the machinery parts, whereas, they have taken an amount of Rs. One Crore &

Thirty Five lacs from the complainant. A sum of Rs. 35 lacs was paid in cash, whereas, Rs. One Crore was paid through two transactions (RTGS) on 03.12.2020 and 14.12.2020. Learned counsel for complainant has further argued that there is every likelihood that the accused may flee India and their passports should be detained in the court. He further argued that in case, the accused clear their outstanding amount, then he is ready to compromise the matter with the accused. However, learned counsel for applicants/accused has submitted that it is a clear case of civil nature because this amount has been adjusted while supplying scrap to the complainant and there are two different agreements dated 07.08.2021 and 01.03.2022. It is further submitted that had the accused committed cheating with the complainant, why they have entered into second agreement and three agreement on 07.08.2021 and 01.03.2022 for purchase of scrap/machinery parts from the complainant.”

After hearing the submission of the learned counsel, it was concluded that the dispute is with regard to the business transaction and the same is likely of a civil nature and the same should not be given the colour of criminal offence. The custody of the respondent Nos. 2 and 3 was not required and they were released on bail with certain conditions. There is nothing on record to show that respondent Nos. 2 and 3 have misused the concession of anticipatory bail granted to them vide orders dated 27.09.2022 and 17.10.2022.

In view of the above, no ground is made out for cancellation of bail granted to respondent Nos. 2 and 3.

Dismissed.

22.11.2022

Mangal Singh

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No