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

CRM-M-155-2023
Date of Decision: 16.02.2023

ATISH GAIKWAD

…Petitioner

Versus

STATE OF HARYANA

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. M.S. Bhatti, Advocate
for the petitioner.

Mr. AmrikNarwal, D.A.G., Haryana.

HARSH BUNGER, J.

Petitioner has filed this petition under Section 438 of the Code of Criminal Procedure before this Court seeking anticipatory bail in case FIR No.755 dated 16.08.2022, registered under Sections 420, 406 and 120-B of the Indian Penal Code, 1860, at Police Station Camp Palwal, District Palwal (Haryana) (Annexure P-1).

The above-said case FIR has been registered on the complaint made by one Vipin Kumar Dhamija, proprietor of `KMR Transport', who has stated that he is running the business of transport through his trucks and they had appointed one person namely, Manjit Singh as Manager in their firm, who has been hired through `AIS Technolabs Pvt. Ltd. Recruitment Agency' on the salary of Rs.44,000/- per month. It is stated that said Manjit Singh used to run business from their office in Palwal. It is stated in the complaint that the transport business involved scheduling of their vehicles for work taken on rent; to receive payment in respect of the vehicles and also to give payment to the vehicles taken on rentand this entire work was being done by Manjit Singh from his firm. The allegations made in the complaint reads as under :-

> *"That for some time, he worked very well but one day in November 2021, call comes from Kumar Precision Private Limited, Bahadurgarh that Manjit Singh has taken the vehicle on rent and not did the payment and also told that he is not answering call when called. On which we doubted and checked our bank account, then we came to know that the vehicles have been taken on the name of Space Logistics and their rent also went in the account of Space Logistics. When we talked with Space Logistics, then they told that Manjit Singh said to them that the trucks which he has taken on rent, he has done the payment of that trucks by himself because his owner has shortage of money and therefore, the money which I have sent to you in the name of KMR Roadlines, transfer that money in my account and by this way, the money which Manjit Singh had to pay to Precision Private Ltd., he has transferred that money in the account of Space Logistics and later on transferred in his account by doing fraud and by this way, he has committed fraud and breached us and Space Logistics. That after the aforesaid incident, our doubt on Manjit Singh gets deeper and we started searching the accounts of our firm, then the works which have been done by Manjit Singh through our firm, we enquired regarding them that from which firm we have to get how much money. That the amount which has been pending towards the following firms is as follows :- 1. Satguru Transport Company, Rudrapur Rs.31,581/-, 2. Abhi Roadlines, Meerut Rs.79,025/-, 3. Malik Roadlines, Aligarh-Rs.30,435/-, 4. Munjal Transport, Rudrapur Rs.70,811/-, 5. U.P. Haryana, Rudrapur Rs.50,823/-, 6. Triveni Transport, Sataria Rs.23,500/-, 7. Luxmi Plywood, Nangloi, Delhi Rs.39,923/-, 8. Rent of Truck Number – Rs.37,000/-, 9. Ashu, Yamuna Nagar-Rs.25,000/-. Apart from this, Rs.41,000/- and one Laptop is also with Manjit Singh. When we talked with the aforesaid firms regarding money, then we came to know*

from these firms that Manjit Singh has already taken all the money by doing calculation and he has transferred some amount in his account and some amount in cash has been given to the person namely Inderjit Singh. That on 20.01.2022, call comes from Rivigo Service Private Limited, near to our firm, that their amount of Rs.3,60,000/- is pending towards us and regarding this, when we have taken the details of our office of the firm, then came to know that the aforesaid Manjit Singh has sent the aforesaid amount in the account of Atish Dalip Gaikwad in Kotak Mahindra Bank and Manjit Singh has done the fake action on the cheque of Atish Dalip Gaikwad and edited Rivigo Service Pvt. Ltd. on it and sent to us through whatsapp and also by this way, he has also done forgery with the aforesaid payment by not sending it to the Rivigo Service Private Limited and sent it to his own person Atish Dalip Gaikwad and embezzled this amount in collusion with him. By this way, he has committed fraud and forgery by taking the vehicles on rent and transferred the money in the account of the person namely Brijesh Kumar Maurya and misused the letter pads of our firm by showing the pending balance of Rs.70,000/- for Diesel from Aurangabad Petrol Pump towards firm. In this way, Manjit Singh, his brother Inderjit alias Jaggi, Atish Dalip Gaikwad and Brijesh Maurya in connivance with each other with the planned conspiracy caused very much economic loss to us by doing fraud, breach of trust and forgery of documents and many more persons with him are also involved in this conspiracy. That Manjit Singh went to Mumbai by committing fraud and embezzling lot of money with our firm and he also stopped picking our phone. His brother Inderjit alias Jaggi and Atish Dalip Gaikwad are also involved in this fraud. Because lot of money of the firm has been embezzled by Inderjit, Manjit Singh and Atish Dalip Gaikwad in connivance with each other. Therefore, it is requested before you that Manjit Singh, Inderjit alias Jaggi, Atish Dalip Gaikwad, Brijesh Maurya and other persons along with them committed crime with the applicant with the planned *conspiracy by doing fraud, breach of trust and forging the documents and embezzled the amount of the applicant, strict legal action should be taken against them regarding this."*

Apprehending arrest in this case, the present petitioner approached the Court of Additional Sessions Judge, Palwal, seeking anticipatory bail; however, the same was rejected vide order dated 15.10.2022 (Annexure P-2). Accordingly, the petitioner has filed the instant petition before this Court seeking anticipatory bail.

Learned counsel for the petitioner has submitted that the petitioner is working in some other transport company and on one day, his employer had asked him for a favour that due to some technical error, his friend Manjit Singh's account was not working and accordingly, asked the petitioner to accept some payment from `KMR Transport Company', wherein Manjit Singh was working and thereafter to transfer the said amount to the account of Manjit Singh. Learned counsel has submitted that on the asking of his employer, the petitioner did the same and transferred the amount through different transactions to Manjit Singh's account; which has shown in the petitioner's statement (Annexure P-4). Learned counsel for the petitioner further states that the petitioner is not the beneficiary of the amount alleged in the complaint/FIR and it is the main accused-Manjit Singh, who is responsible for the said transaction. Learned counsel has submitted that the petitioner has no concern with the allegations levelled in the FIR and he is ready and willing to join investigation as and when required by the Investigating Agency and accordingly, prayer for grant of anticipatory bail has been made.

Per contra, learned State counsel has opposed the prayer for anticipatory bail to the petitioner on the ground that serious and grave allegations have been made in the FIR and Manjit Singh had mis-appropriated the amount through the account of the petitioner, not on one occasion but on several occasions and justification sought to be given by the petitioner that he had done so at the instance of his employer, does not inspire confidence as even the name of the employer is not forthcoming. Learned State counsel has further submitted that in the petition itself, the petitioner has admitted that he connected with Manjit Singh (main accused) through phone calls and accordingly, the custodial interrogation of the petitioner would be required to unearth the mode and manner in which the entire conspiracy to mis-appropriate the amount of the complainant firm was planned and who all are involvedtherein. Accordingly, prayer for dismissal of petition has been made.

I have heard learned counsel for the parties and have perused the paper book with their able assistance.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

In the instant case, there are citric allegations against the petitioner in the FIR itself. It is specifically alleged that the petitioner had received Rs.3,60,000/- from main accused-Manjit Singh through a forged cheque, who had mis-appropriated the payment of the complainant firm, being its manager. Learned District and Sessions Judge, Palwal, while considering the anticipatory bail application of the petitioner, has observed as under :-

> *"8. The allegation against the applicant-accused is that he received Rs.3,60,000/- from accused Manjeet, who misappropriated the payments of the complainant firm being its Manager. The applicant has not given any explanation, as to why he received the said*

amount, which was to be deposited in the account of Rivigo Services Pvt. Ltd. A perusal of the copy of the cheque placed on record shows that as per the investigation the account number of the same is of applicant/accused Atish, but the name of the account holder is Rivigo Services Private Limited, some other firm. Appropriately a forged cheque has been prepared by the accused, in conspiracy with each other to misappropriate the money of complainant firm. Custodial interrogation is required in the present case, to inquire about the role of each accused in the alleged offences of cheating, misappropriation, forgery and fabrication. Also, the recovery of misappropriated amount, is to be effected from the accused. In these circumstances, the applicant does not deserve to be enlarged on pre-arrest bail."

So far as the explanation put forth by the petitioner that he had taken the money into his account at the asking of his employer, does not carry much credence inasmuch as that such an act can be done at best, at one instance and not repeatedly. A perusal of Annexure P-4 attached with the petition, which is the account detail of `Kotak Mahindra Bank' of the petitioner would clearly show that various amounts had come into the account of the petitioner on different dates, which *prima facie* shows his complicity. There is no plausible explanation forthcoming from the petitioner as to why he received the payments.

The custodial interrogation of the petitioner is found to be necessary for complete and effective investigation to find out how he in connivance with Manjit Singh, had done planning of the crime and the mode of its execution, the other persons involved therein and role played by each one of them, how the amount of Rs.3,60,000/- received from Manjit Singh was dealt with etc. In case, custodial interrogation of the petitioner is denied to the Investigating Agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

In ***State represented by the C.B.I. versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268***, Hon'ble the Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful information.

Finding no merits in the petition, the same stands dismissed accordingly.

It may be mentioned here that nothing discussed here-in-above shall have any bearing on the merits of the case.

February 16, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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