IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of Decision:-03.02.2023

CRM-M-880-2023

Anil Kumar.

......Petitioner.

Versus

State of Punjab.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Raj Mohan Singh, Advocate for the Petitioner.

Mr. Shubham Kaushik, Assistant Advocate General, Punjab.

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JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.150 dated 27.09.2022 under Sections 406, 408, 467, 468, 469, 470, 471 and 120-B IPC registered at Police Station Lalru, District SAS Nagar.

The present FIR came to be registered at the instance of M/s Nahar Industrial Traders Ltd. against (1) Rahul Aggarwal son of Manoj Kumar Aggarwal Marketing Executive, Resident of Agrawal Bhawan, 25 Tambol Pada, District Kota City, Kota (Raj.), (2) Anil Kumar (petitioner), Executive Accounts, residence of Near Pakka Talab, near Shiv Mandir, VPO Raipur Rani, Panchkula, Haryana, (3) Anil Kumar, resident of H.No.1836, Harvgovindpura Colony, Barara, District Ambala (Haryana), (4) Pramod Shivbabu Singh Proprietor of M/s Neha Trading Mumbai, 205, 2nd Floor, Shivrise Building, Akruli Road, Kandivali East, Mumbai (Maharashtra), Padavala Lakshmi Proprietor of M/s Bharti Devi Apparel Pvt. Ltd. D.No.14-6-30/4, Sri Nagar Colony, Revenue Road Ward No.8, Ponnur, Guntur (AP) and (6) Rahul Kumar Yadav Proprietor of M/s Kaashvi Creation Flat No.605 G Wing, Building No.3, Khadb Mhada, Bolinj, Virar West, Papghar, Mumbai (Maharashtra).

The allegations are that the complainant company is engaged in the manufacturing and marketing of textile products. Accused No.1 to 3 were employees of the company and accused no.4 to 6 are companies in whose accounts the misappropriated amount has been credited in connivance with accused nos.1, 2 & 3. The complainant company had noticed during internal audit that the amount of Rs.1104043.51/- had been wrongly credited to M/s Gokaldas Exports, Shahi Exports and India Design as cash discount and quality claims and the wrongly credited amount has been fraudulently credited in the bank accounts of accused no.4 to 6. It was further revealed during the course of investigation that neither M/s Gokaldass Exports, Shahi Exports or India Design firms were eligible for any cash discount or quality claims and nor have they ever claimed such amount from the complainant company. The documents entered for the cash discount and quality claims were forged and fabricated. On still further investigation and open questioning of accused no.1 Rahul Aggarwal, who is the marketing incharge it was found that he was handling the account of accused no.4 to 6 and M/s Gokaldass Exports, Shahi Exports and India Design. He confessed that he in connivance with accused no.2 and 3 i.e. Anil Kumar (petitioner) and Sandeep of the accounts department fraudulently entered forged voucher of cash discount and quality claims in the name of Gokaldass Exports, Shahi Exports and India Design. He had further fraudulently diverted undue credit in the bank account of accused no.4-Neha Trading Mumbai and accused no.5- Bharti Devi Guntur and accused no.6-M/s Kaashvi Creations respectively. It was further found that accused no.1 to 3 had embezzled the amount as mentioned above of the complainant company by forging documents and had distributed ill-gotten cash by fraudulent means amongst themselves. The actual extent of the embezzlement could only be ascertained after concluding the audit of entries posted by accused no.1 and 3 and the same would be established by the complainant in due course. A request was made to register an FIR under Sections 406, 408, 467, 468, 469, 470, 471 and 120-B IPC.

The counsel for the petitioner contends that the main accused Rahul Aggarwal has named the petitioner during the course of enquiry conducted by the complainant company under threat and inducement . The investigating agency has also recorded the disclosure statement of the said Rahul Aggarwal in which he has named the present Petitioner. The said statement has no evidentiary value in the eyes of law. No recovery whatsoever has been effected from then petitioner. As per the version of the complainant, the embezzlement was conceded to by Rahul Aggarwal alone. Since the petitioner was in custody since 27.09.2022, the investigation stood completed and none of the 15 prosecution witnesses had been examined, the further incarceration of the petitioner was not required more so when he was a first time offender.

The learned Counsel for the State on the other hand contends that the petitioner in connivance with the other accused has defalcated a huge amount from the complainant company. The nature of allegations levelled against the accused including the petitioner did not entitle him to the grant of bail. He however, does not dispute the period of custody undergone by the petitioner, stage of trial as also the fact that the petitioner is a first time offender.

I have heard learned Counsel for the parties at length.

Admittedly the petitioner is in custody since 27.09.2022 and none of the 15 prosecution witnesses had been examined so far. He is also said to be a first time offender. This Court in case bearing ***CRM-M-24033-2021(O&M)*** *titled as* ***Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab*** *Decided on* ***31.08.2022*** has held that in cases triable by the Magistrate unless there are serious allegations of accused absconding from trial, or tampering with the evidence, bail should only be declined in exceptional circumstances. In the present case nothing exceptional has been pointed out as to why bail ought to be declined to the petitioner. Neither has the State expressed any serious apprehension of either the petitioner being a flight risk or likely to tamper with the evidence if he was granted the concession of bail. Therefore, the further incarceration of the petitioner is not required.

Thus, without commenting on the merits of the case, the petition is allowed and petitioner-**Anil Kumar** son of Sh. Atma Ram is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the present case.

In addition, the petitioner (or any one on their behalf) shall prepare a FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

The Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

Feburary 03, 2022
Vinay

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***