IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-10499-2023 (O&M)
Date of Decision: 28.08.2023

CAR PAVILLION PVT. LTD.

…Petitioner

Versus

STATE OF HARYANA AND ANOTHER

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Narender Hooda, Senior Advocate assisted by
Mr. Rishab Raj Jain, Advocate and
Mr. Naveen Sharma, Advocate
for the petitioner.

Mr. Rajiv Goel, D.A.G., Haryana.

Mr. Bipan Ghai, Senior Advocate assisted by
Mr. Nikhil ghai, Advocate
and Mr. Shubahm Mangla, Advocate
for respondent No.2.

HARSH BUNGER, J.

Petitioner-Car Pavillion Private Limited has filed this petition under Section 439(2) of the Code of Criminal Procedure, 1973 (for short `the Cr.P.C.'), seeking cancellation of regular bail granted to respondent No.2 (Ravinder Kumar Raichand alias Ravi Thakkar) in case FIR No.27 dated 08.05.2021, under Sections 66, 66-D of the Information Technology Act, 2008 and under Section 420 of the Indian Penal Code (for short `the IPC') by learned Additional Sessions Judge, Gurugram vide order dated 21.01.2023 (Annexure P-2). Another prayer has been made for setting aside order dated 07.02.2023 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Gurugram, directing release of passport of respondent No.2.

2. Briefly, the afore-said case FIR has been registered on the complaint of Vivek Rathi, authorized representative of Car Pavillion Private Limited (in short `CPPL'); wherein it was stated that the complainant is a private limited company and is dealing in sale and purchase of used cars, having its registered Office at 8, Baldev Nagar, Khuei Khas, Delhi, with its branch at 3rd Floor, Tower-B, Unitech Cyber Pass, Gurugram. In the complaint, it has been alleged that one of the accused i.e. M/s Bytie Enterprises, sole proprietorship concern of Mr. Shivam Singh, has either hacked the bank account of the petitioner-company or colluded with one or more of the employees of the petitioner-company (as listed in Annexure `E' of the complaint), who have access to its E-net Banking facility, which resulted in illegal transfer and embezzlement of funds of a sum of Rs.4 crores. As per the petitioner-company, it maintains the Current Bank Account for its business with ICICI Bank Limited, having its branch at Gurgaon, which is stated to have been opened on 09.07.2020. As per the petitioner-complainant, it has availed the facility of E-net Banking Services from the said bank to carry out transactions over various channels of communication like the internet including but not limited to the funds transfer facility by giving payment instructions whether through Electronic Clearing Service or otherwise. It is stated that the funds transfer facility can be used to transfer funds to third party i.e. like the primary accused and E-net is a Corporate Internet Banking Portal, which works on Inputter-Authorizer concept in which an Inputter initiates the transaction, using his/her login credentials, which is further approved by an authorizer (approver), using his/her individual login credentials and Digital Certificate. It is stated that E-net can be accessed anywhere by the Inputter-Authorizer, irrespective of the

location/time/PC/laptop, having internet link and it requires user's credentials and digital certificate of authorization, which are both requisite for E-net login and transaction, which is stated to have been provided by ICICI Bank, to the petitioner-company.

3. As per the petitioner-company, for the business purposes and banking transactions, the company as per the internal practice, had given the user ID and password, for the afore-said E-net portal, for both Inputter-Authorizer to a limited number of employees of the Company, who are working in the Finance Department of the petitioner-company and certain other authorized persons. As per the petitioner-complainant, these persons are not only responsible but also accountable for managing the banking transactions and transfer of funds, as per the instructions and requirement. The detail of such persons, having access to the USER ID and Password are provided in Annexure `E' of the complaint and are referred to as "Secondary Accused". It is further stated in the complaint that the Secondary Accused are carrying out the banking transactions on behalf of the petitioner-company on regular basis, using the E-net facility (either individually and/or jointly, using USER ID and Password for both Inputter-Authorizer. As per the petitioner-complainant, the limit of the employees to use the E-net facility to carry out the transfer of funds to third party was set to maximum of a sum of Rs.25 lacs, per transaction. It is alleged that on 08.04.2021 (at around 14:47:27 p.m.), either individually or jointly, a few of the Secondary Accused carried out 16 illegal transactions of Rs.25 lacs, each by using the afore-said E-net facility and illegally transferred the sum of Rs.4 crores, to the Bank Account bearing No.348805500316, maintained with ICICI Bank Limited, in the name of the primary accused i.e. M/s Bytie Enterprises, sole proprietorship concern of

Mr. Shivam Singh. The copy of the Bank Statement of the petitioner-company along with supporting E-net Facility Ledger, is attached with the complaint as Annexure `C'. As per the petitioner-complainant, it was unable to ascertain who exactly in the list of the Secondary Accused, have illegally carried out the afore-mentioned transfer of funds from the CPPL Bank Account to the bank account of the Primary Accused i.e. M/s Bytie Enterprises, sole proprietorship concern of Mr. Shivam Singh. It is alleged that the Primary Accused has conspired with one or more of the Secondary Accused and got the funds of Rs.4 crores transferred to his account in a well-crafted *modus operandi*. As per the petitioner-complainant, its Company does fortnightly re-conciliation of CPPL Bank Accounts and its balance and during such re-conciliation carried out by the company officials on 26.04.2021, it transpired that the said transfer of funds of Rs.4 crores to the Primary Accused i.e. M/s Bytie Enterprises, is not authorized and has been illegally carried out. It is stated that the Primary Accused i.e. M/s Bytie Enterprises, is not the authorized beneficiary of the petitioner-company and the funds have been illegally transferred by either jointly or individually or severally by one or more of the Secondary Accused in collusion with the Primary Accused. It was stated that due to prevalent Covid-19 pandemic, the persons listed as Secondary Accused were carrying out the work from home and were not readily available at the office premises of the petitioner-company, in order to enable the petitioner-company to verify and check with them. It is stated that when the petitioner-company became aware of the afore-said fraud on 26.04.2021, then immediately they submitted a letter dated 27.04.2021 to the ICICI Bank Limited, asking them for reversal of the transaction and also the details of the beneficiary/primary accused. The petitioner-complainant further asked ICICI Bank to provide the I.P Address used for transfer of funds from the bank account of the petitioner-company in order to locate the persons in the list of Secondary Accused, who used the E-net facility to carry out the said illegal transfer of Rs.4 crores to the Primary Accused. As per the petitioner-complainant, it has received a copy of e-mail dated 27.04.2021 from the bank, stating that they shall keep the police informed. According to the petitioner-complainant, it has been informed by the ICICI Bank that the beneficiary or the Primary Accused i.e. M/s Bytie Enterprises, has transferred the entire amount of Rs.4 crores on 08.04.2021 to two different bank accounts for a sum of Rs.3.9 crores and Rs.10 lakh, respectively, into Axis Bank Account No.919020092548506 and IDBI Account No.0130102000038641. Accordingly, the petitioner-complainant stated that the Primary Accused has managed to transfer the money to various other bank accounts or may be in the process of illegally withdrawing the same; therefore, the Primary Accused has colluded with one or more of the Secondary Accused (as listed in Annexure `E') and as indulged in illegal transfer and embezzlement of funds of Rs.4 crores and further transferred the funds to various accounts and thereby committing an offence of criminal breach of trust, misappropriation of funds, cheating, embezzlement, resulting in un-lawful gain to themselves and an un-lawful loss to the petitioner-company. Accordingly, the above-said case FIR (Annexure P-4) was registered.

4. In the status report filed on behalf of State of Haryana, it is mentioned that during the course of investigation of the afore-said FIR, it has come forth that the amount of Rs.4 crores was transferred into the account of firm M/s Bytie Enterprises (firm of accused Shivam Singh). Said

Shivam Singh is stated to have been arrested on 22.05.2021; whereupon, during interrogation, he suffered a disclosure statement, stating that co-accused Ankit Singh, had affixed the signatures of Shivam Singh on the cheque used for opening the account of M/s Bytie Enterprises. Accordingly, Sections 467, 468, 471 and 120-B IPC were added in the case. As per the status report, accused Ankit Singh was arrested on 29.05.2021, who also suffered a disclosure statement wherein he named Amarjeet Kumar Gupta and he got recovered a SIM card of Mobile No.96075-11507 (which was registered in the bank account of M/s Bytie Enterprises) and he also demarcated the place where he had withdrawn Rs.1 lac of M/s Bytie Enterprises from the ATM and further got recovered the amount of Rs.1.5 lacs from the amount of Rs.4 lacs, coming to his share. It is stated in the status report that Amarjeet Kumar Gupta @ Amar @ Ravi Kumar, was arrested on 25.06.2021, who also suffered a disclosure statement and further got recovered an amount of Rs.40,000/- and three cheque books. The challan against accused Amarjeet Gupta, Shivam Singh and Ankit Singh, was submitted in the Court on 18.08.2021. As per the status report, the name of Umesh Gupta @ Ishu came forth during the enquiry conducted from the employees of the petitioner-company and accordingly, he was arrested on 12.09.2021; whereupon he got recovered an amount of Rs.8 lacs, which had come to his share; accordingly, the offence under Section 408 of the Indian Penal Code, was added in the case on 14.09.2021 as he is the Account Associate of the petitioner-company and he had provided the Net Banking User ID and Password to co-accused Anshul Tyagi, Saurabh Sharma, Rahul, Sanjeev and Anant Singh @ Anna and all of them transferred the amount of Rs.4 crores through net-banking. It is further mentioned in the status report that Anshul Tyagi, whose name came forth in the disclosure statement of Umesh Gupta, was arrested on 19.10.2021. Said Anshul Tyagi got recovered the laptop used by him in the alleged crime. Supplementary challan is stated to have been submitted against Umesh Gupta and accused Anshul Tyagi, on 09.12.2021 for the offence under Sections 408, 420, 467, 468, 471, 120-B IPC and Sections 66/66-D of the I.T. Act. As per the status report, the raid was conducted to apprehend accused Hameed Abbas Ali Khan and S. Xavier Susairathinam (beneficiary account holders as the amount of Rs.20 lakhs has been credited in the account of accused Hameed Abbas Ali Khan and the amount of Rs.10 lakhs has been credited in the account of accused S. Xavier Susairathinam). During raid, it came forth that accused S. Xavier Susairathinam is admitted in De-Addiction Cum Rehabilitation Centre, District Kancheepuram, Tamil Nadu since 17.09.2022. However, accused Hameed Abbas Ali Khan could not be found during raid. It is further mentioned in the status report that accused Amit Jindal was arrested on 16.12.2022, who suffered a disclosure statement that the amount of Rs.10 lacs was received in the account of M/s Bytie Enterprises from the account of the petitioner-company and the said amount was transferred from M/s Bytie Enterprises to the merchant account of Paymark Payment Technologies and Service Pvt. Ltd. of accused Amit Jindal. It is further mentioned in the status report that on the asking of one Sarita Bhatnagar, he (Amit Jindal) gave the amount of Rs.9,80,000/- to the girl sent by another accused Anant Singh and he kept Rs.20,000/- as commission at the rate of 2%. Amit Jindal is stated to have got recovered the mobile phone having SIM No.8800510819, from where the WhatsApp chat of Amit Jindal and Sarita Bhatnagar, was extracted and the phone was sent to the DITAC Lab for retrieval of data and the report is stated to be awaited. It is also mentioned in the status report that the raid was conducted at Delhi to join Sarita Bhatnagar in the investigation; however, she could not be found and is stated to be absconding.

5. As per status report, accused Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar (whose name came forth in the statement of Vipul Natwarlal Dhokalia), is stated to have been arrested on 28.12.2022, who also suffered a disclosure statement and he further got recovered an amount of Rs.32,000/- out of the amount of Rs.72,000/- which came to his share along with two mobile phones. Aforesaid Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, is stated to have been granted bail by the Court of Additional Sessions Judge, Gurugram on 21.01.2023 and on dated 07.02.2022, even his passport was also ordered to be released.

6. It is mentioned in the status report that Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, had further named one Goswami Bhagwat Puri, in his disclosure statement, who was also arrested and he got recovered an amount of Rs.20,000/- out of amount of Rs.36,000/-, which allegedly came to his share.

7. As per status report, accused-Vipul Natwarlal Dholakia, was arrested on 01.01.2023. It is further mentioned that after the arrest of Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, it transpired that an amount of Rs.3,59,00,000/- came to accused Vipul Dholakia and he purchased the gold of the said amount and thereafter, received the cash amount of Rs.3,59,00,000/- by selling the said gold. It is submitted that accused Vipul Natwarlal Dholakia received Rs.72,000/- in his share and he got recovered an amount of Rs.21,500/- out of the afore-said amount of Rs.72,000/- and two mobile phones. Said Vipul Natwarlal Dholakia is also stated to have been granted bail by the learned Additional Sessions Judge,

Gurugram on 10.02.2023. Three other accused namely Anant Singh @ Anna, Hameed Abbas Ali Khan and Saurabh Sharma, are yet to be arrested and raids were conducted to arrest them.

8. As regards Anant Singh @ Anna, it is mentioned in the status report that as per information provided by the Immigration Department, he had travelled to U.A.E. on 20.09.2020 and returned to India on 11.10.2020 and thereafter, the Investigating Officer technically examined the e-mail ID of accused-Anant Singh and the IP logs of the said e-mail were found to be of Dubai (U.A.E.) as on 12.12.2022. It is mentioned that there are total 14 accused in the present case at this stage. However, the number of accused may increase as per the investigation being conducted. It is further mentioned that out of total 14 accused, 09 accused namely; Shivam Singh, Ankit Singh, Anshul Tyagi, Umesh Gupta, Amarjeet Kumar Gupta, Amit Jindal, Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, Goswami Bhagwat Puri and Vipul Natwarlal Dholakia, have been arrested during investigation; whereas arrest warrants of three accused Hameed Abbas Ali Khan, Anant Singh @ Anna and Saurabh Sharma, have been issued. Susairathinam, is stated to be admitted in De-Addiction-cum-Rehabilitation Centre. Accused-Sarita Bhatnagar is stated to be absconding.

9. As regards the role of Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, it is mentioned that he is the known of accused Goswami Bhagwat Puri. The accused Goswami Bhagwat Puri has asked for the bank account from the accused Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar. The accused Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar has contacted the accused Vipul Natwarlal Dholakia for the bank account, who provided his IDBI bank account No.0130102000038641 to him. The accused Ravinder Kumar Raichand

Bhai Majethia @ Ravi Thakkar shared the bank account details to the accused Goswami Bhagwat Puri who further shared the bank details with the accused Anant Singh. The accused Anant Singh has transferred the amount of Rs.3,59,00,000/- to the accused Vipul Natwarlal Dholakia's IDBI bank account No.0130102000038641 from Bytie Enterprises Bank Account. The accused Vipul Natwarlal Dholakia has purchased the gold of the said amount and thereafter he received the cash amount by selling the gold. The accused Vipul Natwarlal Dholakia had given the said cash amount to the accused Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar. The accused Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar had given the said amount to the accused Goswami Bhagwat Puri who further gave the said cash amount to the accused Anant Singh. The accused Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar has received an amount of Rs.72,000/- which come to his share out of which Rs.32,000/- and 2 mobile phones got recovered during the police remand.

10. By way of this petition, the petitioner herein challenges very grant of bail to respondent No.2-Ravinder Kumar Raichand alias Ravi Thakkar, vide order dated 21.01.2023 (Annexure P-2) passed by learned Additional Sessions Judge, Gurugram.

11. Before considering the submissions raised by learned senior counsel for the petitioner, it would be apposite to refer to the considerations, which have weighed with the learned Additional Sessions Judge, Gurugram, while granting bail to respondent No.2 in this case. A perusal of order dated 21.01.2023 (Annexure P-2) would manifest that respondent No.2 has been granted bail taking into account the following

facts/considerations ;

(i) Respondent no.2 was not named in the FIR;

(ii) The name of respondent No.2 was disclosed by one Vipul Dholkia to the police in his statement recorded under Section 161 Cr.P.C., wherein he stated that he is running a firm in the name and style of "Vipul Jewellers Anand Chambers" which deals in the sale and purchase of silver and gold, for the last 3-4 years and he has a bank account bearing No.0130102000038641, in IDBI bank, in the name of his firm. He further stated that he came to know from the bank that his aforesaid account has been freezed by the police of Gurugram Cyber Crime and he had been asked to explain the amount received by him in his afore-said account. Said Vipul Dholkia (in his statement under Section 161 Cr.P.C.) also stated that he knew respondent No.2-Ravinder Kumar Raichand alias Ravi Thakkar and he has also been dealing in the sale and purchase of silver and gold and he is his (Vipul Dholkia) regular customer. Vipul Dholkia (respondent No.2 in CRM-M-10524-2023) further disclosed in his statement under Section 161 Cr.P.C. that said Ravi Thakkar had come to him (Vipul Dholkia) and told him that there is one party from Delhi, who was interested in purchasing gold of Rs.3-4 crores and Vipul Dholkia assured Ravi Thakkar, to supply the gold on receipt of money in his account and thereafter, the amount was transferred from the account of M/s Bytie Enterprise to the account of Vipul Jewellers (Account No.0130102000038641). Vipul Dholkia sold the gold against payment of Rs.3,59,00,000/-. Ravinder Kumar Raichand Bhai Majithia @ Ravi Thakkar, has simply introduced the said Vipul Dholkia to the accused party for purchase of gold.

(iii) The role of respondent No.2 comes into picture only after the commission of offence.

(iv) No connection, prior to the commission of offence between respondent No.2 and the perpetrators of crime has been shown on record.

(v) Respondent no.2 has simply acted as a broker for purchase of gold and as a broker, he has introduced the proprietor of M/s Bytie Enterprise to jeweler Vipul Dholkia.

(vi) Co-accused Ankit, who is the main conspirator, has been granted bail by the Punjab and Haryana HIgh Court vide order dated 21.11.2022.

(vii) Respondent no.2 was in custody since 28.12.2022.

(viii) All the offences are triable by the Magistrate;

(ix) Investigation qua the co-accused has already been completed and challan qua them has been filed.

12. Further, learned Additional Sessions Judge, Gurugram has admitted respondent No.2 to regular bail on the following conditions :-

> *" furnish bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of Illaqa Magistrate/Duty Magistrate."*

13. Learned senior counsel for the petitioner, *inter alia*, seeks cancellation of bail to respondent No.2-Ravinder Kumar Raichand Bhai Majithia @ Ravi Thakkar, by submitting as under :-

> *"(i) The learned Court below had failed to appreciate that Vipul Natwarlal Dholakia, in his initial statement dated 17.05.2021 stated that respondent No.2-Ravi Thakkar had approached him on the pretext that some party from Delhi wanted to purchase gold worth Rs.3-4 crores and money was transferred to the account of Vipul Jewellers from the account of M/s Bytie Enterprises and he gave the gold to Ravi Thakkar. However, as per the reply dated 30.01.2023 of the Investigating Agency in response to the bail application of accused Vipul Dholakia, Vipul Dholakia had received Rs.3,59,00,000/- from the account of Bytie Enterprises and he raised fake bills/invoices in the name of Bytie Enterprises in order to mislead the police. It is submitted that with the above money received from Bytie Enterprises, Vipul Dholakia purchased gold from various*

vendors and then sold the same in the market for cash, which he then gave to respondent No.2 after taking his own commission. Thereafter, respondent No.2 delivered the same to the main accused i.e. Anant Singh.

(ii) The learned Court below had failed to appreciate that the embezelled/misappropriated amount has not been recovered and respondent No.2 has played a crucial role in disposing the embezelled amount. Hence, granting bail to respondent No.2 would hamper the pending investigation and would also further diminish the probability of recovery of embezzled money.

(iii) That the learned Court below had not appreciated that the role of respondent No.2 has not been fully unearthed and granting bail to him would significantly prejudice the investigation.

(iv) That the kingpin of present criminal conspiracy i.e. accused Anant Singh has not been apprehended yet and his whereabouts are unknown and respondent No.2 is the only link between Vipul Dholakia and Anant Singh as the money was delivered from accused Vipul Dholakia to accused Anant Singh by respondent No.2.

(v) That the learned Court below has failed to appreciate that the bail application of respondent No.2 had earlier been dismissed by the Court of Judicial Magistrate Ist Class, Gurugram vide order dated 09.01.2023 by observing that the police had recovered only a meagre amount till date and respondent No.2 had played an active role in delivering the amount to main accused (Anant Singh). Thus, the grant of bail to respondent No.2 will prejudice the efforts of the Investigating Agency to apprehend Anant Singh since respondent No.2 was the only link between Vipul Dholakia and Anant Singh.

(vi) That the role of respondent No.2 was even more significant than the role of accused Amit Jindal,

whose bail application was dismissed by the trial Court. Thus, grant of bail to respondent No.2 and further releasing his passport and allowing him to go to Dubai will result in respondent No.2 evading himself from the clutches of law as respondent No.2 played an essential role in disposing the embezzled money.

(vii) That the learned Court below has granted bail to respondent No.2 on the ground of parity by observing that another co-accused Ankit has been granted bail by this Court, whereas Ankit was arrested on 29.05.2021 and he remained in the judicial custody for a period of about 18 months and thereafter, he was granted bail. On the other hand, respondent No.2 had been arrested on 28.12.2022 and had been granted bail only after 20 days of arrest.

14. On the other hand, learned counsel appearing for respondent No.2 has opposed the prayer made in this petition by filing his reply. It is the stand of respondent No.2 that he was not named in the FIR and he has been nominated as an accused on the basis of alleged disclosure statements of other accused, which are hit by Section 25 of the Evidence Act and are not admissible in evidence. It is submitted that respondent No.2 does not personally know Anant Singh and did not know the employees of the petitioner-complainant company nor respondent No.2 knows Shivam Singh (proprietor of M/s Bytie Enterprises) and he was also not aware of his being nominated as an accused in the present case. It is submitted that respondent No.2 never received any money from Vipul or any other person. It is next submitted that respondent No.2 has visited UAE prior to his attaining knowledge about his nomination in the present case FIR. It is stated that respondent No.2 had gone to UAE for business purposes being employee of "Woodland Management Consultants", Dubai. It is contended that merely because the Investigating Agency has failed to arrest Anant Singh, is no

ground to cancel bail of respondent No.2. It is submitted that the personal liberty of a person is of a paramount consideration in the eyes of law, which is required to be considered by the Court while granting bail. It is contended that there is no illegality or perversity in the order granting bail to respondent No.2, especially when another co-accused Ankit, has been granted bail by this Court. It is also contended that respondent No.2 has not misused the concession of bail extended to him and the investigation qua him is complete. Learned counsel for respondent No.2 submitted that the order dated 21.01.2023 (Annexure P-2) granting bail is justified and in accordance with law; hence, no interference is called for. Accordingly, it is contended that there is no merit in the petition and the same is liable to be dismissed.

15. Learned counsel for respondent No.2 has further submitted that in order to ensure the appearance of respondent No.2 during trial before the trial Court, additional conditions may be imposed and respondent No.2 shall comply with the same.

16. Learned State counsel has supported the contentions of the petitioner-complainant by submitting that respondent No.2 has committed a serious fraud and in case, he is allowed to remain on bail then he may influence the witnesses or may even abscond and thereby delay the trial.

17. I have considered the rival contentions of the parties and also perused the order dated 21.01.2023 (Annexure P-2) passed by learned Additional Sessions Judge, Gurugram, while granting regular bail to respondent No.2 and also the order dated 07.02.2023 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Gurugram; directing release of passport of respondent No.2.

18. It may be re-iterated that respondent No.2 was not named in the FIR and his name has figured only during the course of investigation in disclosure statements of co-accused. The investigation qua respondent No.2 is complete and challan stands presented. The genuineness or otherwise of disclosure statements of co-accused and also their evidentiary value shall be subject matter of trial, which is undergoing and is likely to take time to conclude. Further, the co-accused Ankit has already been granted bail by the Co-ordinate Bench of this Court vide order dated ***21.11.2022*** passed in ***CRM-M-46478-2022***, by observing as under :-

> *" I have heard learned counsel for the parties and have gone through the record with their able assistance.*
>
> *While considering the claim of the petitioner for the grant of bail, the only precaution which needs to be taken in whether, in case the prayer of the petitioner for the grant of regular bail is accepted, the same will have effect upon the trial or not i.e. whether the petitioner will influence the trial or not. The investigation qua the allegations being alleged against the petitioner is already over and the challan has been presented. The allegation which the Investigating Agency is putting forward for the consideration of the competent Court of law, to be converted into charges, is that the petitioner helped co-accused Shivam Singh to open the company under the name and style of M/s Bytie Enterprises, wherein, the money siphoned from the account of the petitioner was transferred and later on was disbursed to various other accused. As of now, the company i.e. M/s Bytie Enterprises is registered in the name of co-accused Shivam Singh. It is co-accused Shivam Singh who has disclosed that the said company was opened by the petitioner after forging his signature. These allegations are yet to be proved against the petitioner. Out of the total embezzlement of Rs.4 crores, even after*

investigation, allegation against the petitioner is that he is beneficiary of Rs.4 lacs out of which, Rs.1.5 already stands recovered during the investigation. That being so, coupled with the fact that the petitioner is already behind the bars for the last 18 months and the charges are yet to be framed and there are 22 witnesses, who have been cited to be examined, in case charges are framed against the petitioner, it is very likely that the trial is going to take some time before it concludes.

Nothing has come on record as of now that in case the benefit of regular bail is extended to the petitioner, he will misuse the same in any manner so as to flee the trial or influence the same or the witnesses to be examined during the trial.

Rather learned counsel for the petitioner has assured this Court that in case the benefit of regular bail is extended to the petitioner, he will behave in a manner required under law and will not influence the witnesses or the trial in any manner. Even in default of the said undertaking, the Investigating Agency or the complainant is also not without any remedy and can approach this Court in case of any violation of the terms and conditions of the bail by the petitioner for the review of this order.

Keeping in view the above, the petitioner has made out the case for the grant of regular bail."

19. The complicity of respondent No.2 in the case would ultimately be decided by the trial Court on the basis of the evidence, to be led by the prosecution as well as the accused parties.

20. As regards the submission of petitioner that the role of respondent No.2 has not been unearthed and that respondent No.2 is the only link between Vipul Dholakia and Anant Singh; suffice it to say that challan/supplementary challan already stands filed and in case, any new

circumstance/evidence comes to the notice of Investigating Agency/officers then certainly respondent No.2 can be confronted with the new circumstance. However, only on that account, in my considered view the order granting bail to respondent No.2 cannot be set-aside.

21. As far as the apprehension expressed by learned counsel for the petitioner that respondent No.2 might abscond or otherwise influence the witnesses, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent court for cancellation of bail. Accordingly, it is observed that the State / Prosecuting Agency / State police shall be at liberty to observe the behaviour of respondent No.2 during bail period, and in case it feels that he is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State / Prosecuting Agency / State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

22. In view of the above, it cannot be said that order dated 21.01.2023 (Annexure P-2) passed by learned Additional Sessions Judge, Gurugram, is an improper or arbitrary exercise of discretion by the Court below. The order passed by learned Additional Sessions Judge, Gurugram cannot be said to be suffering from any fundamental error nor there is any other material factor for which the bail granted by the Court below to respondent No.2 in this petition is to be annulled.

23. As regards order dated 07.02.2023 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Gurugram releasing passport of respondent No.2 is concerned, it is observed that the Court below has considered the plea of respondent No.2 that he is working in UAE and at

the same time, in order to ensure and secure presence of respondent No.2 to face trial, the following condition has been imposed :-

> *"Therefore, in order to secure his presence to face trial, the application is allowed subject to furnishing security in the sum of Rs.25 Lakhs in the form of immovable property/FD. It is made clear that the accused makes violations of any terms and conditions of bail or fails to appear in the court on any date without reasonable cause to the satisfaction of the court, this amount shall be forfeited to the state including giving of wrong address, wrong mobile number, switching off mobile number during the investigation, failure to pick up the call made by IO within reasonable time for purpose of investigation, the release of passport may be cancelled by the court after hearing both the parties."*

After considering the afore-said order dated 07.02.2023 (Annexure P-3), I am of the considered view that the Court below has imposed sufficient conditions to secure presence of respondent No.2 to face trial while ordering release of passport of respondent No.2 and at this stage, no interference is required in the order dated 07.02.2023 (Annexure P-3) except that respondent No.2 shall be bound by the additional conditions which I deem appropriate to secure presence/appearance of respondent No.2-Ravinder Kumar Raichand alias Ravi Thakkar, during the course of trial. Accordingly, it is directed that :-

> *(i) Respondent No.2 shall appear before the trial Court on each and every date of hearing, unless specifically exempted from doing so.*
>
> *(ii) Respondent No.2 shall not leave the country without seeking permission from the Court.*
>
> *(iii) Respondent No.2 shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of the case and*

any change in the address shall be communicated to the concerned Station House Officer, forthwith.

(iv) Respondent no.2 would furnish his telephone number to the concerned Station House Officer and would keep his mobile location on.

(v) Respondent no.2 shall appear before the police station concerned once in three months till the conclusion of trial in this case and every time inform in writing that he is not involved in any other crime other than the case(s) mentioned in the present order.

(vi) Respondent no.2 will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him / her from disclosing such facts to the Court.

(vii) Respondent no.2 (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1 lac and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of absence of respondent No.2 from trial without sufficient cause.

24. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayers made in this petition.

25. The petition is accordingly disposed of.

26. All pending application/s, if any, shall also stand closed.

August 28th, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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

GURPREET KAUR
2023.09.05 14:11
I attest to the accuracy and
authenticity of this order/judgment