

CRM-M-22980-2018 (O&M)

2023:PHHC:113391

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

**CRM-M-22980-2018 (O&M)
Date of Decision: 29.08.2023**

Shashi Kumar

.. Petitioner

Vs.

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. P.S. Jammu, Advocate for applicant-petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Nitin Jain, Advocate
for the complainant.

...

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 438 of Code of Criminal Procedure for seeking pre-arrest bail in FIR No.222 dated 30.03.2018, under Sections 120-B, 406 & 420 of Indian Penal Code, 1860, registered at Police Station Sadar Palwal, District Palwal.

(2) As per prosecution case, an amount of Rs.5 crore was fraudulently transferred to 68 different beneficiaries by forging the signatures of authorized person of M/s Namo Alloys Pvt. Ltd.

Petitioner is stated to be the proprietor of M/s Cool Age Air Conditioning and an amount of Rs.83,76,750/- was allegedly transferred in his bank account from M/s Namo Alloys Pvt. Ltd. in the present case.

(3) It transpires that Coordinate on June 1st, 2018 while granting interim bail to the petitioner passed the following order:-

*“Prayer in this petition is for grant of anticipatory bail to
the petitioner in FIR No. 22 dated 30.03.2018 registered under*

Sections 120-B, 406 and 420 IPC at Police Station Sadar Palwal, District Palwal.

Learned Senior counsel for the petitioner has submitted that the petitioner is a proprietor of Cool Age Air Conditioning and he was having business dealings with the complainant-firm and as on today, approximately, an amount of Rs.54 lacs is outstanding against the petitioner. It is further submitted that the petitioner is ready to pay the said amount in 02 installments and he will deposit an amount of Rs.10 lacs by way of a demand draft favouring the complainant-firm namely Namo Alloys Private Limited and will bring the remaining amount by way of a demand draft on the next date of hearing.

Learned Senior counsel for the petitioner has further submitted that the co-accused of the petitioner namely Suraj Kumar Bothra has been granted the concession of interim bail vide order dated 27.04.2018 passed in CRM-M-17801 of 2018, in which the co-accused of the petitioner was also directed to bring the demand draft of the outstanding amount. It is further submitted that it is a dispute regarding settlement of the account and the petitioner is ready to settle the same.

Learned Senior counsel for the petitioner has further submitted that since the account of the petitioner has been seized by the investigating officer, the Investigating Officer be directed to enable the petitioner to operate his account in order to prepare the demand drafts.

Ordered accordingly.

Notice of motion for 24.08.2018.

Mr. Naveen Sheoran, DAG, Haryana, who is present in the Court accepts notice on behalf of the respondent-State while Mr. Nitin Jain, Advocate has appeared on behalf of the complainant.

Counsel for the petitioner is directed to supply a copy of paperbook to counsel opposite during course of the day.

In the meantime, the petitioner is directed to appear before the Investigating Officer on 11.06.2018 at 10.00 am or

on any other date or time fixed by him to join investigation and he shall be released on interim bail on furnishing bail/surety bonds subject to the following conditions:-

- 1. He shall make himself available for interrogation by a police officer as and when required;*
- 2. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and*
- 3. He shall not leave India without previous permission of the Court.”*

(4) On September 10th, 2018, petitioner handed over a Demand Draft of Rs.10,00,000/- in favour of complainant and undertook to comply with the order dated June 1st, 2018 by the next date of hearing.

(5) On the adjourned date i.e., September 25th, 2018, although, there was non-compliance of the undertaking dated June 1st, 2018, but parties were relegated before the Mediation & Conciliation Centre of this Court and interim orders were extended from time to time.

Since petitioner failed to honour the undertaking, therefore, another Coordinate Bench on March 9th, 2021, vacated interim protection and the order reads as under:-

“Learned counsel for the applicant/complainant contends that petitioner was granted interim bail, vide order dated 01.06.2018, with the undertaking that an amount of Rs.54,00,000/- is outstanding against the petitioner and he is ready to pay the said amount in 02 installments and he will deposit an amount of Rs.10,00,000/- by way of demand draft favouring complainant-Firm namely Namo Alloys Private Limited and will bring the remaining amount by way of demand

draft on the next date of hearing. He further submits that though the petitioner has deposited only a sum of Rs.20,00,000/- despite availing numerous opportunities, whereas balance amount of Rs.34,00,000/- has not been deposited by the petitioner and as such order dated 01.06.2018 has not been complied with at the instance of petitioner in letter and spirit till date.

Faced with this situation, learned counsel for the petitioner contends that due to financial constraints, petitioner is not in a position to deposit the balance amount of Rs.34,00,000/- in order to comply with order dated 01.06.2018 in totality.

In view of above, since order dated 01.06.2018 has not been complied with by the petitioner in letter and spirit and in view of the fact that petitioner has shown his inability to deposit the balance amount of Rs.34,00,000/- in pursuant to order dated 01.06.2018, relief of interim bail granted to the petitioner, stands vacated.”

(6) Again, the case was adjourned from time to time. The petitioner moved CRM-10202-2021 for restoration of the interim protection granted on June 1st, 2018. Also transpires that on September 15^h, 2022, petitioner handed over a demand draft of Rs.10 lakhs in favour of complainant and acknowledged that Rs.15 lakh more shall be paid within 03 months and case was posted for January 16th, 2023.

Yet again, petitioner failed to comply with the order dated September 15th, 2022 and sought more time on the premise that Rs.3 lakhs shall be paid to the complainant today itself i.e. February 14th, 2023 and the remaining balance of Rs.12 lakh to be paid within one month and the matter was posted for March 20th, 2023.

Again, the petitioner failed to comply with the order dated February 14th, 2023 and that resulted into vacation of the interim protection

vide order dated March 20th, 2023.

(7) Today, when learned counsel for the petitioner was confronted with the repeated adjournments and for non-compliance of the undertakings given from time to time, then he candidly submitted that despite his best efforts, petitioner is not coming forward; nor he is responding in the matter.

(8) Although, in such like matters, it is not the function of this Court to recover the alleged amount, if any; but, since petitioner himself had undertaken on various occasions to refund the same and it is quite evident that he failed to do so despite sufficient opportunities. Also not in dispute that petitioner got extended the interim protection from time to time and now he is not coming forward; rather misusing the concession for the reasons best known to him.

Thus, in such a scenario, there is no option except to dismiss the petition.

(9) Ordered accordingly.

(10) Pending applications, if any, shall also stand disposed off.

29.08.2023
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No