

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-15263-2023

Date of Decision:-30.10.2023

Girish Kumar Gandhi.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Mr. Gourav Kathuria, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in FIR No.0521 of 2020 dated 31.08.2020 under Sections 406, 420, 467, 468, 471 and 120-B IPC registered at Police Station Sadar, Gurugram, Haryana.

2. The brief facts of the case are that a complaint was submitted by Vikas Jaiswal who alleged that he had purchased a franchise from D.BM. Retail Private Ltd. of the brand "Big Mart". He had paid a refundable security amount of Rs.30 lacs by three cheques and the accused company was liable to pay 10% commission on monthly basis as per an agreement dated 03.10.2019. Later, the directors of the accused company, namely, Sanjay Satpathy (since granted bail vide order dated 16.10.2020 passed by Additional Sessions Judge at Gurugram), Vijay Shekhawat @ Vijay Shekhawat (since granted bail vide order dated 5.9.2023 passed in CRM-M-

23751-2023), Girish Gandhi (petitioner), Abhinav and others had stopped paying commission to him (complainant). When the accused company did not make further payment as per agreement, he (complainant) attempted to contact all the directors and other persons of the company but they kept lingering on with the matter on one pretext or the other. On 16.07.2020, the company-DBM Retail Pvt. Ltd. changed its name to Big Mart Pvt. Ltd. From the website of the Registrar of the Companies, it was revealed that on 10.07.2020, Sanjay Satpathy had resigned from the company. The enquiry further revealed that the accused company was never the owner of the brand “Big Mart”. Legal action was sought, leading to the registration of the present FIR.

During the course of investigation, the relevant record was obtained from the Bank. The statements of 39 investors of “Big Mart” were recorded and from the said statements, it came forth that the investors had deposited Rs.17 Crores 56 Lacs in the companies “Big Mart” i.e. DBM Retail Pvt. Ltd., BMD Retail Pvt. Ltd., BM Super Mart Pvt. Ltd. And White Blue Retail Pvt. Ltd.

Petitioner-Girish Kumar Gandhi was arrested on 01.10.2020 and got recorded his disclosure statement. Accused-Sanjay Satpathi @ Sanjay Satpati was arrested on 02.10.2020. He got recovered agreements entered into with the investors of Big Mart, visiting card, swipe machine, Big Mart swipe card machine and stamp, which were taken into police possession.

The report under Section 173(2) Cr.P.C. was submitted against Girish Kumar Gandhi and Sanjay Satpati on 04.01.2021.

Ajay Kumar @ Ankur @ Sonu Verma was arrested on 22.02.2021 on the basis of production warrants. He got recovered the swipe

machine of DBM company, and the supplementary challan under Section 173(8) Cr.P.C. was submitted against him on 06.09.2021.

The production warrants of the Sunil @ Vijay Shekhawat @ Mistri @ Babli was obtained and he was arrested on 21.02.2023. He got recovered three stamps, one stamp of Green Rock Enterprises and two stamps of Money Shine Financial Services. The supplementary challan was presented against him on 22.06.2023.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. He was not a director of the company but only a signatory in the Bank accounts of the company and was not concerned with the running of the affairs of the company in any manner. Therefore, he could not be held responsible for the offences committed by the company. He, however, contends that taking the allegations to be true, the present case was one of mere breach of a contract and no offence of cheating was made out. Two co-accused of the petitioner, namely, Sanjay Satpati and Vijay Shekhawat had been granted the concession of bail vide orders dated 16.10.2020 (Annexure P-4) and 5.9.2023 (Annexure P-5) respectively. As the case was triable by the Court of a Magistrate, none of the 49 prosecution witnesses had been examined so far, the Trial was not likely to be concluded anytime soon and therefore the petitioner was entitled to the concession of bail, more so when out of 16 cases registered against the petitioner, he had been granted the concession of bail in 10 cases.

4. The Counsel for the State has filed three replies by way of affidavits dated 03.09.2023, 17.10.2023 and 28.10.2023. While referring to the said replies he contends that the petitioner is one of the main accused and was a director in a number of companies. He however, concedes that in the

company referred to in the FIR i.e. DBM Retail the petitioner is not a director but is a director in the company namely White Blue Retail Private Limited (a company of Big Mart). As there were multiple cases pending against the petitioner, he was not entitled to the concession of bail. He however, concedes that in the present case the petitioner is in custody since 31.08.2020, none of the 49 prosecution witnesses had been examined so far, out of 16 cases registered against the petitioner, he had been granted the concession of bail in 10 cases as also the fact that two of the co-accused of the petitioner have been granted the concession of bail.

5. I have heard the learned counsel for the parties.
6. This Court in the case titled as Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab bearing CRM-M-24033-2021(O&M) Decided on 31.08.2022 has held as under:-

“ Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts) , in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant.”

7. The Petitioner is stated to be an accused in 16 cases the details of which are as under:-

Sr.No.	FIR No./Year	Under Sections	Status
1.	FIR No.521/2020	406, 420, 467, 468, 471, 120-B IPC P.S. Sadar Gurugram	Present case CRM-M-15263-2023
2.	FIR No.30/2021	406, 420, 467, 468, 471, 120-B IPC P.S. Sadar Gurugram	Petitioner is on bail and challan filed on 02.09.2023

3.	FIR No.1028/2020	406, 420, 506 IPC P.S. Civil Lines Muradabad, U.P.	Petitioner is on bail 22.07.2022
4.	FIR No.146/2020	420, 506, 120-B IPC P.S. Kotwali, Jawalapur, District Haridwar	Petitioner is on bail vide order dated 16.09.2022
5.	FIR No.294/2022	420, 467, 468, 471, 504, 506, 406, 120-B IPC P.S. Sipari Bazar, District Jhansi, U.P.	Petitioner is on bail vide order dated 02.11.2022
6.	FIR No.190/2020	406, 420, 467, 468, 471, 120-B IPC P.S. Kotgate Distrit Bikaner, Rajasthan	Petitioner granted bail on 24.08.2022
7.	FIR No.343/2020	406, 420, 506 IPC P.S. Kotwali, District Mathura	Petitioner is granted bail vide order dated 18.10.2022
8.	FIR No.685/202	406, 420, 467, 468, 471, 506 IPC P.S. Vrindavan, District Mathura, U.P.	Petitioner is granted bail vide order dated 11.08.2022
9.	FIR No.297/2020	406, 420 IPC P.S. Kotwalia, Patiala, Punjab	Petitioner's bail petition is pending in this Court for 07.11.2023 vide CRM-M-41857- 2023
10.	FIR No.190/2020	420, 406, 120-B IPC P.S. Savina District Udaipur, Rajasthan	Petitioner is on bail vide order dated 25.02.2022
11.	FIR No.309/2020	419, 420, 506, 120-B IPC P.S. Sidharath Nagar, District Sidharth Nagar, U.P.	Petitioner is on bail and the Trial is Going on.
12.	FIR No.507/2022	406, 420 IPC P.S. Thalassery Kannur, Kerala	Status of the case is yet to be verified
13.	FIR No.230/2020	419, 420, 120-B IPC P.S. Sardarpur, District Jodhpur	Status of the case is yet to be verified

		West, Rajasthan	
14.	FIR No.290/2020	420, 506 IPC P.S. Rayadaga, District Orissa	Status of the case is yet to be verified
15.	FIR No.222/2020	406, 420, 120-B IPC P.S. Tulsipur, District Balrampur, U.P.	Status of the case is yet to be verified
16.	FIR No.141/2023	3(1) of Gangster Act, P.S. Tulsipur, District Balrampur, U.P.	Status of the case is yet to be verified

8. A perusal of the above-mentioned chart would show that in most of the cases registered against the petitioner, he has been granted the concession of bail. Further no serious apprehension has been expressed by the State that the petitioner would abscond from justice, tamper with the evidence or influence witnesses if he is granted the concession of bail. He is in custody since 01.10.2020 in the present case and none of the 49 prosecution witnesses have been examined so far. Therefore, the trial is not likely to be concluded anytime soon. In this situation, his further incarceration is not warranted, moreso as the case is triable by the Court of a Magistrate.

9. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, **Girish Kumar Gandhi** son of Sh. Vishambhar Lal Gandhi is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case/crime other than the the cases referred to in this order.

11. If any attempt whatsoever is made by the petitioner and/or his family members/friends to contact/threaten/intimidate any of the witnesses

of the present occurrence, the State/complainant shall be at liberty to move an application for cancellation of bail granted vide this order.

12. In addition, the petitioner (someone else on his behalf) shall prepare an 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

(JASJIT SINGH BEDI)
JUDGE

October 30, 2023
Vinay

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