

CRM-M-23751-2023 (O & M)

::1::

(220)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23751-2023 (O & M)

Date of decision: 05.09.2023

Sunil @ Vijay Shekhawat

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Jagan Nath Bhandari, Advocate
for the applicant-petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

CRM-37365-2023

The application for placing on record the facts and documents (Annexure P-13 to P-18) is allowed as prayed. The same are taken on record subject to all just exceptions.

CRM-M-23751-2023

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

CRM-M-23751-2023 (O & M)**::2::**

(220)

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, Vijay Sehkhawat @ Vijay Shekhawat (petitioner), Girish Gandhi, 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.

Accused-Girish Kumar Gandhi was arrested on 01.10.2020 and got recorded his disclosure statement. Accused-Sanjay Satpathi @ Sanjay

CRM-M-23751-2023 (O & M)

::3::

(220)

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 Verms 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 petitioner-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 neither a director of the company nor a signatory in the Bank accounts of the company and as he was not concerned with the running of the affairs of the company in any manner 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. In fact, the petitioner had been sought to be arrested on the basis of production warrants way back in

CRM-M-23751-2023 (O & M)**::4::**

(220)

October-November, 2020 but for the reasons best known to the investigating agency, he was not taken into custody formally in the present case until 21.02.2023. The case was triable by the Court of a Magistrate. As none of the 49 prosecution witnesses had been examined so far, the trial in the present case was not likely to be concluded anytime soon and therefore, the petitioner was entitled to the concession of bail, moreso, when in 11 out of the 13 cases registered against him, he had been granted the similar concession.

4. The learned counsel for the State has filed a reply dated 01.09.2023 by way of an affidavit of Abhimanyu, HPS, Assistant Commissioner of Police, Sadar Gurugram and the same has been taken on record. While referring to the said reply, he contends that the petitioner was a director of White Blue Retail Pvt. Ltd. (a company of Big Mart). The said company i.e. White Blue Retail Pvt. Ltd. had obtained Rs.4-5 Crores from 20 investors on the pretext of getting them a franchise of "Big Mart". Co-accused Girish Kumar Gandhi was an authorized signatory of the account of White Blue Retail Pvt. Ltd. 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 21.02.2023, none of 49 prosecution witnesses had been examined so far and in 11 of the 13 cases registered against him, he had been granted the concession of bail.

5. I have heard the learned counsel for the parties.

CRM-M-23751-2023 (O & M)

::5::

(220)

6. This Court in the case titled as *Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab bearing CRM-M24033-2021(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. Admittedly, the petitioner is an accused in 13 cases, the details of which are reproduced hereinbelow:-

Sr. No.	FIR No./Year	Under Sections	Police Station	Annexure(s)
1.	563/2020	420, 467, 468, 471, 411, 409, 506 and 120-B IPC	Phase III, District Gautam Budh Nagar	P-6
2.	571/2020	420, 467, 468, 471, 411, 409 and 120-B IPC	Phase III, District Gautam Budh Nagar	P-10
3.	562/2020	420, 467, 468, 471, 411, 409, 504, 506 and 120-B IPC	Phase III, District Gautam Budh Nagar	P-5
4.	565/2020	420, 467, 468, 471, 411, 409 and 120-B IPC	Phase III, District Gautam Budh Nagar	P-8
5	570/2020	420, 467, 468, 471, 411, 409, 504, 506 and 120-B IPC	Phase III, District Gautam Budh Nagar	P-9

CRM-M-23751-2023 (O & M)

::6::

(220)

6.	572/2020	420, 467, 468, 471, 411, 409 and 120-B IPC	Phase III, District Gautam Bud h Nagar	P-11
7.	564/2020	420, 467, 468, 471, 409, 504, 506, 411 and 120-B IPC	Phase III, District Gautam Budh Nagar	P-7
8.	146/2020	420, 506 and 120-B IPC	Police Station Jwalapur, District Haridwar	P-15
9.	546/2020	420, 467, 468, 471, 409, 504, 506, 411 and 120-B IPC	Phase III, District Gautam Budh Nagar	P-4
10.	30 dated 22.01.2021	406, 420, 467, 468, 471, 120-B and 506 IPC	Police Station Sadar, Gurugram	Not on bail
11.	0296/2020	420, 406 and 120-B IPC	Kotwali, District Sikar	Bail granted
12.	0343/2020	420, 406 and 506 IPC	Kotwali, District Mathura	P-13
13.	65/2020	406, 420, 467, 468, 471 and 120-B IPC	Police Station Technocity, Kolkata	Bail granted

8. A perusal of the above-mentioned chart would show that other than in FIR No.30/2021 and the present case, the petitioner has been granted the concession of bail in all cases. 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. The petitioner is in custody since 21.02.2023 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

CRM-M-23751-2023 (O & M)

::7::

(220)

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, Sunil @ Vijay Shekhawat 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.

September 05, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No