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204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30170-2022 (O&M)
Date of decision : 03.11.2023

Arush Jain

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. Amandeep Singh Rai, Advocate,
for the petitioner.

Mr. Jaiteshwar S. Bhandari, AAG, Punjab,
for respondent No.1.

Mr. Sunil Chadha, Senior Advocate, with
Mr. Akshay Chadha, Advocate, and
Ms. Taanvi Dhull, Advocate,
for respondent No.2.

MAHABIR SINGH SINDHU, J.

Petition has been filed under Section 438 of the Code of Criminal Procedure, 1973, for grant of pre-arrest bail to the petitioner in FIR No.133 dated 16.06.2022, under Section 420 of the Indian Penal Code, 1860, registered at Police Station Sarabha Nagar, District Police Commissionerate Ludhiana.

2. Above FIR was registered at the instance of complainant Major Singh claiming himself to be a partner of M/s Genesis Engineering Company, wherein it has been alleged that petitioner has committed crime by forging some documents and using a name which was similar to the name

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of his firm and secured a contract from the TATA Company to install LED lights for Ludhiana Municipal Corporation.

3. The Coordinate Bench, on 15.07.2022, granted interim bail to petitioner and relevant part of the same is recapitulated as under:-

“The present petition has been filed under Section 438 Cr.P.C. seeking concession of pre-arrest bail in case bearing FIR No.133, dated 16.06.2022, under Section 420 IPC, registered at Police Station Sarabha Nagar, District Police Commissionerate Ludhiana.

Learned counsel appearing on behalf of the petitioner inter alia contends that the FIR in question has been got registered at the instance of one Major Singh son of Ajit Singh claiming himself to be a partner of M/s Genesis Engineering Company wherein it has been alleged that the petitioner is an A-Class electrical contractor duly licensed by the Chief Electrical Inspector, Government of Punjab. The said firm had been executing various electrical and mechanical works for the government and non-government bodies and has been assigned separate GST/PAN number. He contends that in the year 2015, the petitioner had approached the complainant and allured him to enter into an Memorandum of Understanding so that they can jointly submit bids for obtaining contracts from the Government/non-Government organizations. The MOU in question was signed between the complainant as well as petitioner Arush Jain on 23.06.2015 at Ludhiana. He further contends that the petitioner thereafter obtained various contracts to carry out the electrical works in Central Jail, Goindwal as well as for the Amritsar Improvement Trust by using a name which was similar to the name of the complainant's firm and also secured a contract from the TATA

company to install LED street lights from Ludhiana Municipal Corporation in October, 2018 by forging the licence of the firm of the complainant. It is contended that upon being confronted with the same, the petitioner apologized for a venture undertaken by him and further entered into an agreement to pay a sum of Rs.9 lacs per annum to the complainant as liability, however, the petitioner did not abide by the said assurance/liability undertaken by him and the payment in question is not being made.

Learned counsel inter alia submits that there had been no offence of cheating on the part of the petitioner in any manner whatsoever insofar as the complainant is concerned. Right from the inception of the contractual relationship amongst the parties, the complainant was fully aware of all the agreements that were obtained by the petitioner and that the due amount which fell to the share of the complainant was Rs.14.16 lacs including the GST and that the complainant had duly remitted a sum of Rs.15.10 lacs. However, the complainant himself failed to submit the bills mentioned in GST due to which the petitioner had to suffer loss for inability to claim the reimbursement of the GST itself. He submits that in any case, the allegations are taken to be correct and true, even the petitioner had secured the contracts from some third party on the strength of some documents as are alleged to have been misused. It is not the case of the complainant that he had participated for a bid or submitted bids to the said contracts and had been ousted from the participation thereof. The person, if any, who can claim to have been misled on the strength of the documents are the persons who are the employers of the petitioner and cause of action, if any, lies only with the said persons not with the petitioner. It is further contended that the

entire case is based on documentary evidence and the same are in possession of the respective agencies as well as per the knowledge of the petitioner. Besides, the petitioner does not have any criminal antecedents. His custodial interrogation would not be required.

Notice of motion.

Ms. Amarjit Kaur Khurana, DAG, Punjab accepts notice on behalf of respondent No.1-State and Mr. Gurcharan Dass, Advocate has put in appearance and filed power of attorney of Sh. Bakhshish Singh (being attorney) on behalf of respondent No.2-complainant.

Learned counsel appearing on behalf of the complainant contends that the petitioner has secured the contracts from various agencies on the strength of documents pertaining to the complainant without any approval/consent of the complainant.

Adjourned to 27.09.2022.

Reply if any be filed in the meanwhile.

In the meantime, the petitioner is directed to join investigation as and when so required by the Investigating Agency. In the event of petitioner joining investigation, he shall be admitted to interim bail by the arresting officer/investigating officer on furnishing of bail bonds by him to the satisfaction of the arresting officer/investigating officer. The petitioner shall also abide by the conditions as specified under Section 438(2) Cr.P.C.”

4. Contends that in terms of the aforesaid order, petitioner has already joined investigation and his custodial interrogation is not required.

5. Learned Senior counsel for complainant vehemently opposes the prayer while raising the plea of fraud & forgery against the execution of

Memorandum of Understanding (for short, 'MOU') dated 23.06.2015 between the parties. Learned State counsel also seeks custodial interrogation of petitioner to verify the genuineness of MOU.

6. Heard learned counsel for the parties and perused the paper-book.

7. It is an admitted position that parties, i.e. petitioner as well as complainant have already taken recourse to the arbitration proceedings, which are stated to be pending before the Sole Arbitrator for 04.11.2023. Although, mere pendency of arbitration proceedings would not be an absolute bar to initiate criminal proceedings, but in the present case, the position is materially different and which can be noticed herein-below:-

(i) Concededly, petitioner filed arbitration petition under Section 11 of the Arbitration & Conciliation Act, 1996, for appointment of an Arbitrator and same was allowed vide order dated 25.04.2023 by the Co-ordinate Bench.

(ii) The sole basis of filing petition under Section 11 (*ibid*) was existence of an arbitration clause contained in the MOU. This Court has gone through the order dated 25.04.2023 and a perusal of same nowhere reveals that respondent/complainant raised any objection against the legality of MOU dated 23.06.2015; including, plea of fraud or forgery.

In such a scenario, the pendency of arbitration proceedings would be of utmost relevance.

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8. In view of the above factual position, there is no option except to allow the petition.

9. Consequently, petition is allowed and order dated 15.07.2022 is made absolute.

10. It is also made clear that petitioner shall fully co-operate with the Investigating Officer as and when called for further investigation.

11. Needless to say that observations made above be not construed as an expression of opinion on merits of the controversy or regarding the MOU dated 23.06.2015, in any manner; nor the same shall prejudice the stand of either side(s) before the Sole Arbitrator.

12. In compliance of the order dated 08.08.2023, the original licence, retained by the Registry, be returned to the person concerned, forthwith under proper receipt.

03.11.2023

adhikari(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :

Yes

No

Whether Reportable :

Yes

No