IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

202 **CRM-M-30163-2023**
Date of Decision: 16.06.2023

SURAJ KUMAR

... Petitioner

VERSUS

UNION TERRITORY OF CHANDIGARH

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Ms. Swati Dayalan, Advocate
for the petitioner.

Mr. Shashank Bhandari, Addl. P.P., UT, Chandigarh.

Mr. Vikas Mohan Gupta, Advocate and
Mr. Varun Mittal, Advocate for the complainant.

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VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.0041, dated 27.04.2023 under Sections 120-B, 408, 420 and 477-A of the Indian Penal Code, 1860 registered at Police Station Industrial Area, Chandigarh (Annexure P-1).

The FIR in the present case has been registered on the statement of Devender Kumar against the petitioner amongst others levelling the allegations of theft, forgery, falsification of record, misappropriation of property, criminal breach of trust, criminal conspiracy, concealing of stolen property and also dishonestly receiving the stolen property. The complainant is the Accounts Manager of Universal Corporation Ltd., which is engaged in the business of trading and distribution of various branded products and accessories. The complainant company is having more than 25 warehouse offices and more than 2500 distributors alongwith unaccountable sellers all over the country. It also has a nation-wide tie-up with almost all branded supermarket chain. The offence in question pertains to the warehouse office situated in Industrial Area, Phase-I, Chandigarh. Petitioner Suraj Kumar was initially appointed as Warehouse Executive and later on promoted as Billing Executive Branch (Branch Incharge). The wife of the petitioner namely Sunaina is the Proprietor of M/s Ishani Trading Company. It was the duty of the petitioner to maintain the Warehouse Office, hence the keys of the Warehouse Office were also in the possession and control of the petitioner amongst others. It was noticed in the month of October 2022 that some of the vendors/distributors complained of the mismanagement in their accounts. Upon reconciliation, it was revealed that there were certain irregularities in issuance of bills and at certain times the stock against the billed orders were not delivered to the distributor, however, the stock had been removed from the warehouse equivalent to the bill. During further investigation on 28.10.2022, a stock deficit of 82 boxed of Duracell Batteries worth Rs.11-12 lacs was noticed. An explanation was sought from the petitioner and other co-accused, however, they were unable to render any satisfactory explanation. The complainant company thus conveyed its decision for lodging a police complaint, whereupon the petitioner and other co-accused requested the company officials that they shall arrange the amount against the deficit stock. Payment against the missing stock was thereafter made by a company namely M/s Shivloti Traders. Even though the above said matter was closed, however, it raised a doubt on the working of employees of the Warehouse Office that if the stock was sold to M/s Shivloti Traders, then why the bill to that effect has not been generated at the Warehouse Office followed by the necessary documentation i.e. e-way bill, proof of deliver and payment by the party etc. and consequently, if the stock had not been sold to M/s Shivloti Traders, then why did it remit the payment of Rs.11-12 lacs to the complainant company. Hence, the Management decided to cross-check and verify the veracity of the stocks, payments and proof of deliveries etc. pertaining to the Chandigarh Warehouse Office especially the outstanding re-conciliation of customers prepared by the accused including the petitioner herein. It then transpired that various invoices had been raised in the name of M/s Shivloti Trader, however, the requisite proof of delivery and movement of goods/stock were not available. On an enquiry from the said trader, it transpired that the goods/stock against the said invoices had not been delivered to it. Similarly, the stock in question was also shown to have been issued in the accounts of various other dealers, however, there was no proof of delivery to the said dealers and they also confirmed that they have not received the stock against the abovesaid bills/invoices. Similar was the *modus operandi* qua the Wallmart and various other traders/dealers. It revealed that the petitioner was involved in heavy shifting/clandestine removal of stock from the warehouse office without any corresponding data that could establish the delivery of such huge supply. On being confronted, the petitioner alongwith other co-accused admitted their guilt. The petitioner also transferred an amount of Rs.4,00,000/- in the account of Complainant from his personal account and prayed for some time to repay the whole amount. The other accused persons informed that the stock is lying with M/s Ishani Trading Company i.e. the company which the sole proprietorship concern of the wife of the petitioner. It was also revealed that the abovesaid proprietorship was habitually receiving and selling the stock stolen from the Warehouse Office of the complainant company. The total misappropriation of the stock ascertained till filing of the complaint with the police is to the tune of more than Rs.1 crore. Hence the FIR in question was got registered.

Learned counsel for the petitioner vehemently argued that the petitioner was beneficiary to the extent of Rs.25,00,000/- in total and that he is ready and willing to repay the entire outstanding amount provided some reasonable time is granted to him. She contends that the petitioner has realized his mistake and an amount of Rs.4,00,000/- had earlier been transferred to the account of the complainant company and that he has already paid a sum of Rs.8,00,000/- making a total of Rs.12,00,000/-. (However, the abovesaid claim is disputed by the complainant, who admits that a sum of Rs.8.28 lacs approximately has been received) She further argues that the petitioner cannot be held responsible for any failure to remit the payment by M/s Ishani Trading Company and that as the petitioner is willing to make good the loss and to indemnify the complainant, there is no necessity of custodial interrogation. She also submits that the petitioner is in the prime of his youth and that any incarceration is likely to prejudice his life. Further the case in question is based on documentary evidence, which is already in possession of the complainant/ Investigating Agency and as such, the custodial interrogation of the petitioner is not required for the purpose of investigation.

Per contra, learned State Counsel assisted by the counsel for the complainant have argued that the petitioner cannot plead ignorance of transactions that had taken place between M/s Ishani Trading Co. and the complainant company considering that the aforesaid proprietorship is in the name of the wife of the petitioner himself. They contend that it was not a case of some solitary instance which may be ignored; rather it is a reflection of numerous transactions made over a huge stan of time. The stock in question was being removed in a very clandestine manner and against fictitious invoices/bills to the company owned by the wife of the petitioner. The offer to make good the loss does not wash away the crime committed by the petitioner and other co-accused. Further, it is apparently not an instance of somebody having fallen on the wrong side of law, rather it is an example of a crime executed after due planning and design. The amount as assessed by the complainant at the time of submission of complaint to the police was only tentative and might be a tip of an iceberg. The petitioner being kingpin charting the crime, showing any concession on any such plea that the case is based on documentary evidence would only amount to giving the benefit to an accused who has already admitted his crime as the link is completely associated with the petitioner. The petitioner being custodian of the stocks and having been entrusted the safe custody thereof has not only committed criminal breach of trust and dishonest misappropriation of property but also indulged in committing heinous offences of forging the records and that any undue concession to a crime committed after due planning would pave way for repeated commission of such offence.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

The counsel for the petitioner has admitted that the stocks had been shifted to M/s Ishani Trading Company against the fictitious invoices. It is also not in dispute that wife of the petitioner is the sole proprietor of M/s

Ishani Trading Company. The petitioner being the Head of Billing Branch and being in possession of the keys of the Warehouse Office, apparently executed the crime consciously and was not on the wrong side of the law by chance. Even though the complainant alleged that the stock worth more than Rs.1 crore had been removed in a clandestine manner, the petitioner admitted having received the benefits to the extent of Rs.25,00,000/- approximately. Remaining details of the stock and its shifting is yet to be revealed. Moreover, the other co-accused and the persons involved in such criminal act is yet to be determined. The balance stock of more than Rs.75,00,000/- is also yet to be recovered. Documentary evidence is only to the extent of assessing the removal of the stock and as such, the custodial interrogation of the petitioner may be required for disclosing the names of other persons involved in the entire transactions and who committed the offence and were also the beneficiaries of the abovesaid transactions. All these aspects can only be revealed through custodial interrogation/investigation.

Taking into consideration the nature of allegations levelled against the petitioner, his role and responsibility, admission of the liability by him, acknowledgement of receipt of the stocks by his wife being the sole proprietor of M/s Ishani Trading Company, the voluminous stock that had been removed by the petitioner from the Warehouse Office of the complainant, the gravity of the offence, the necessity to unearth the entire chain and also the necessity of recovering the outstanding stock, I feel that it is not a fit case where concession of anticipatory bail may be extended to a person who executes a crime in a predesigned and clandestine manner, especially when there is sufficient *prima facie* evidence to assume his conscious and voluntary participation in the commission of the offence and when huge recoveries are yet to be effected. In the above noticed circumstances, the extension of protection by way of granting anticipatory bail shall materially impair the taking of investigation to a logical end. I, thus, fail to find sufficient reasons as to why the concession of pre-arrest bail ought to be extended to a person like the petitioner, who has committed the offence by design.

The present petition is accordingly dismissed.

However, nothing observed hereinabove shall be construed as an expression of opinion on the merits of the case.

(VINOD S. BHARDWAJ)
16.06.2023 **JUDGE**
rajender

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