IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on 16.02.2023
Pronounced on 22.02.2023

(i) CRM-M-39938-2022

Parveen Kumar Dadu .... Petitioner

Versus

State of Punjab and another .... Respondents

(ii) CRM-M-39627-2022

Pooja Dadu .... Petitioner

Versus

State of Punjab and another .... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Yogesh Goel, Mr. Lakshay Goel & Mr. Mayank Kalra, Advocates for the petitioner(s) (in both cases).

Mr. G.S. Sandhu, Deputy Advocate General, Punjab.

Mr. Vikram Satpal Anand, Advocate for respondent No. 2 (in both cases).

ASHOK KUMAR VERMA, J.

1. By this common order two aforementioned petitions are being disposed of, as both have arisen out of the same FIR.

2. The petitioners have filed the present petitions under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No. 0234 dated 10.08.2022 registered under Sections 406, 420 and 120-B IPC at Police Station Sahnewal, District Ludhiana.

3. The above-said FIR was registered on the basis of complaint made by complainant-Sandeep Kumar Banka, alleging therein that he is the proprietor of firm M/s Thirumala Traders, APMC Yard Tiptur, District Tumkur, Karnataka. Darpan Dadu, Pooja Dadu and Parveen Dadu are running the firm M/s Traclaxx Tractors Pvt. Ltd. at Gen. Mohan Singh Road, Opposite Podder Tyres, Jugiana G.T. Road, Ludhiana. They are manufacturers of tractors and are making authorized distributors all over India through advertisements and other mediums. Darpan Dadu is the Managing Director whereas Pooja Dadu and Parveen Dadu are the authorized persons of the said firm M/s Traclaxx Tractors Pvt. Ltd. These persons had approached the complainant and offered him the business of sale of tractors as authorized Distributor and allured him that they will provide the tractors and the complainant will earn a lot of profit. They also told the complainant that they have a reputed name and fame in the business. On their assurance, the complainant arranged an amount of Rs.20,00,000/- and Rs.30,00,000/- and transferred the same in the account of their company on 13.01.2020 and 20.01.2020 through RTGS, respectively. Thereafter, an agreement 17.01.2020 was sent to the complainant by them. As a result thereof, the complainant entered into an agreement with their company M/s Traclaxx Tractors Pvt. Ltd. and vide Letter of Intent (LOI) dated 17.01.2020, the premises of the complainant was approved by the aforesaid persons and he was appointed as authorized distributor for the sale of Traclaxx Range Tractors as and independent distributor. However, the accused neither

provided nor supplied the tractors to the complainant as per their promise. When the accused failed to keep their promise, then the complainant requested them to return his money, but accused-Darpan Dadu postponed the matter time and again under false pretext and he also blocked the contact number of the complainant. On several occasions the complainant tried to contact the company but its staff members did not accede to his request. After some time, the complainant came to know that the aforesaid accused persons are habitual of cheating their customers in the name of their company and many complaints are pending against them. It is also alleged that the accused persons are also threatening the complainant to do whatever he wants to do.

4. Learned counsel for the petitioners further submits that petitioner-Parveen Kumar Dadu, though was Director of the Company, but he was not in-charge and responsible for day-to-day affairs of the company. The petitioner is not signatory to the agreement/Letter of Intent dated 17.01.2020, vide which business dealing was started with the complainant and he was not aware about the same. He has no role in the alleged commission of crime.

5. Learned counsel for the petitioner further submits that petitioner-Pooja Dadu, is a housewife and mother of two minor daughters. She has falsely been implicated in the present case with *mala fide* intention because she is wife of Darpan Dadu, Managing Director of the Company. She has no concern with the affairs of the company. She too is neither a signatory nor in-charge/director and

responsible for affairs of the company. She is not involved in any other case.

6. Learned counsel for the petitioners further submits that earlier preliminary enquiry was conducted by the police in which it was found that there was breach of conditions of agreement/LOI dated 17.01.2020. Subsequently, present false case was registered without considering the enquiry report. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulant or dishonest intention is shown right at the beginning of transaction. The matter in question is purely of civil nature which has been given a criminal colour by the complainant in order to take advantage of relatively quick relief granted in criminal case in contrast to civil dispute. The offences are triable by a Magistrate. The FIR has been lodged just to pressurize the petitioners and to extort money from them. Nothing is to be recovered from the petitioners and their custodial interrogation is not required in the instant case. The petitioners are ready and willing to join the investigation. In support of his contentions, learned counsel for the petitioners has relied upon judgment of Hon'ble the Apex Court in ***Mitesh Kumar J.Sha vs. State of Karnataka and others, 2021(4) RCR (Criminal) 573*** and ***Deepak Gaba and others vs. State of Uttar Pradesh and another, 2023(1) RCR (Criminal) 659.***

7. On the other hand, learned State counsel assisted by learned counsel for respondent No. 2-complainant vehemently opposed the petitions on the ground that there are specific allegations against both the petitioners in the FIR which was registered after a detailed

enquiry. The petitioners are authorized persons of the company. During the course of inquiry, the company premises of the petitioners was found locked as the same had been shifted by the accused to some other place about 2-3 years back. On verification, it was found that the company of the petitioners is not manufacturing tractors anymore rather it is manufacturing tractor parts viz axels and spindles. At the time of agreement with the complainant, the petitioners did not disclose that they were in rented premises and that they had very conveniently, changed their company premises to another place to avoid any further contact with the complainant. Whenever the complainant used to call the petitioners, everytime the call was answered by petitioner-Pooja Dadu (in CRM-M-39627-2022). Petitioner-Parveen Kumar Dadu (CRM-M-39938-2022), is also involved in two other cases of similar nature bearing FIR No. 87 dated 24.05.2021 and FIR No. 88 of 2018. For thorough investigation of the case and for recovery of embezzled amount, custodial interrogation of the petitioners is necessary. Therefore, both the petitions may be dismissed.

8. I have heard learned counsel for the petitioners and carefully gone through the record.

9. Admittedly, the business dealings between the parties are not in dispute. The accused persons were running firm M/s Traclaxx Tractors Pvt. Ltd. wherein co-accused-Darpan Dadu, was the Managing Director whereas both petitioners, namely, Parveen Kumar Dadu and Pooja Dadu, were authorized persons. According to the prosecution story, as per terms of the agreement/LOI, the complainant deposited a

total sum of Rs.50,00,000/- to the company of the petitioners for doing business at Tiptur, District Tumkur, Karnataka, with all necessary requirements mentioned in the LOI but in spite of requests and demands made by the complainant, the company of the petitioners neither provided nor supplied the tractors to the complainant. The complainant approached the petitioners and requested that if they cannot provide tractors then return his money but co-accused-Darpan Dadu, Managing Director of the said company postponed the matter on one or the other false pretext. Till 09.04.2021, Darpan Dadu always sent message to contact his associate Mr. Kulwinder and thereafter, blocked the contact number of the complainant. On 03.05.2021, the complainant sent e-mail to the e-mail ID of the company and requested to return his money but no reply was given by the company of the petitioners. Prior to registration of the FIR, the matter in dispute had been enquired in detail and it came out during enquiry that the accused did not provide tractors to the complainant as their company stopped the manufacturing of tractors, but they did not disclose anything in this regard to the complainant, rather they changed their business location to rented premises so as to avoid any further contact with the complainant. The factum of changing of business premises shows the *mala fide* intentions of the accused. That's how complainant's hard earned money amounting to Rs.50,00,000/- has been illegally grabbed by the petitioners and others and caused loss to the business of the complainant by not providing Tractors as per LOI dated 17.01.2020, without any fault of the complainant.

10. So far as the role of petitioner-Parveen Kumar Dadu (in CRM-M-39938-2022) is concerned, he was the director of the company at the relevant time. He is the beneficiary of the alleged transaction along with co-accused-Darpan Dadu. The rights and liability may be different under the Companies Act on account of their share holding but in the present case, the allegations are specific with regard to the active involvement of petitioner-Parveen Kumar Dadu, in inducing the complainant for investment of huge amount. Petitioner-Parveen Kumar Dadu, had resigned from the Directorship of the company in February, 2022 whereas the deal between the parties pertains to the year 2020. A huge amount is involved in the case and there are allegations in sequence by the complainant against the accused person. More so, antecedents of petitioner-Parveen Kumar Dadu, are not good as he is already involved in 02 other cases of similar nature. It has been observed by the Hon’ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

11. Furthermore, investigation is still going on in the present case and for thorough investigation of the case and recovery of embezzled amount, the custodial interrogation of petitioner-Parveen

Kumar Badu is necessary. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in ***State Vs. Anil Sharma : (1997) 7 SCC 187*** held as under:-

> *"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."*

12. Keeping in view the totality of facts and circumstances of the case aforementioned, gravity of offence and antecedents of petitioner-Parveen Kumar Dadu, he does not deserve the concession of anticipatory bail. Hence, petition bearing CRM-39938-2022 is hereby dismissed.

13. So far as petitioner-Pooja Dadu (in CRM-M-39627-2022) is concerned, she is a household lady having two minor children. She is neither signatory nor in-charge/director and responsible for affairs of the company. She has no concern with the affairs of the company. There are general and vague allegations against petitioner-Pooja Dadu. She has no direct involvement in commissioner of crime. The only allegation against her was that whenever the complainant used to call the petitioners, everytime the call was answered by Pooja Dadu. It is a matter of trial as to whether the ingredients Sections 406, 420 and 120-B IPC are made out or not qua petitioner-Pooja Dadu (in CRM-M-39627-2022). The offences are triable by Magistrate. She is not involved in any other case. It is pertinent to mention here that in the earlier reply dated 27.09.2022 filed by the respondent-State (in CRM-M-39627-2022) it was wrongly mentioned that petitioner-Pooja Dadu was involved in 02 more FIRs of similar nature but now in the subsequent reply dated 24.01.2023, filed by the respondent-State it is fairly conceded that no other case is pending against her.

14. Without commenting on the case's merits, in the facts and circumstances peculiar to this case and for the reasons mentioned above, petitioner-Pooja Dadu (in CRM-M-39627-2022) makes a case for bail, subject to the following terms and conditions:

i) She shall made herself available for interrogation by a police officer as and when required;

ii) She shall not leave India without previous permission of the Court;

iii) Petitioner-Pooja Dadu to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of personal bond shall be deemed acceptance of the following and all other stipulations, terms and conditions of this bail order; and

iv) The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise directly or indirectly, to the witnesses, the police officials, or any other person acquainted with the facts and circumstances of the case, to dissuade them from disclosing such facts to the police, or the Court or to tamper with the evidence.

15. In view of the above CRM-M-39627-2022, filed by Pooja Dadu, is allowed.

22.02.2023 **(ASHOK KUMAR VERMA)**
rishu **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No