IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

1. CRM-M-27339-2023

Neutral Citation No. 2023:PHHC: 138575

****

RAJINDER KUMAR MALHOTRA

. . . . Petitioner

Vs.

STATE OF HARYANA AND ANOTHER

. . . . Respondents

****

2. CRM-M-40826-2023

***Neutral Citation No. 2023:*PHHC: 138576**

****

RAM MEHAR

. . . . Petitioner

Vs.

STATE OF HARYANA AND ANOTHER

. . . . RespondentS

****

Reserved on: 18.10.2023

Pronounced on:30.10.2023

****

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

****

Present: - Mr.Munish Kumar Garg, Mr.Puneet Kapoor and Mr. Tanuj Goyal (Tohana), Advocates, for the petitioner.

Mr.Randhir Singh, Addl. A.G., Haryana.

Mr.Sherry K. Singla, Advocate, for respondent No.2.

****

DEEPAK GUPTA, J.

Both the above titled petitions have arisen out of the same FIR No.84 dated 29.03.2023 registered at Police Station Civil Line, Jind District Jind, under Sections 420 & 120B IPC.'

Background of the case

2. In CRM-M-27339-2023, filed under Section 438 CrPC, petitioner-Rajinder Kumar Malhotra prays for grant of anticipatory bail;

whereas in CRM-M-40826-2023, filed under Section 439 CrPC, petitioner-Ram Mehar prays for grant of regular bail.

3. FIR was lodged on the statement of Sh. Narender, being Manager of the ICICI Bank, Nirjan against Ram Mehar (petitioner in CRM-M-40826-2023), Ankush and some unknown persons. It was stated that complainant-Bank was in the business of banking and also provides several types of financial assistance including gold loan facility by pledging the gold articles/ornaments to the public in India, through its network of branches spread all over the country. On 14.12.2022, Mr. Ravinder Verma, from Internal Audit Department, visited the Bank branch and conducted audit appraisal of the articles/ornaments pledged in the gold loan facility. On scrutinizing hard copies of several files, checking the weight of articles/ornaments pledged in gold loan facility, it was observed by the internal auditor that Ram Mehar son of Vijay Singh resident of Lijwana Khurd, Jind; and Ankush s/o Jasvir r/o Urlana Kalan Panipat, Haryana had availed following gold loans from ICICI Bank:

Sr. No.	Loan date	Loan Account Number	Borrower Name	Loan Amount (in ₹)	Detail of Ornaments Pledged	Audit Findings
1	21.11.2022	451105000031	Ramher	164208	1 Bangle or similar ornament	Fully fake
2	23.11.2022	451105000032	Ramher	282091	Bangle or similar ornament	Fully fake
3	28.11.2022	451105000033	Ramher	258584	1 Necklace	Fully fake
4	29.11.2022	451105000035	Ramher	311130	1 Necklace	Fully fake
5	30.11.2022	451105000036	Ramher	320810	1 Necklace	Fully fake
6	01.12.2022	451105000037	Ramher	396518	1 Necklace	Fully fake
7	01.12.2022	451105000038	Ramher	396518	1 Necklace	Fully fake
8	02.11.2022	451105000039	Ramher	290388	1 Necklace	Fully fake
9	03.12.2022	451105000040	Ankush	333255	1 Necklace	Fully fake
10	03.12.2022	451105000041	Ramher	595000	2 Necklace	Fully fake
11	09.12.2022	451105000043	Ankush	373946	1 Necklace	Fully fake
12	12.12.2022	451105000044	Ankush	370388	1 Necklace	Fully fake
13	12.12.2022	451105000045	Ankush	334452	1 Necklace	Fully fake
14	13.12.2022	451105000046	Ankush	317018	1 Necklace	Fully fake
15	13.12.2022	451105000047	Ankush	323778	1 Necklace	Fully fake

4. The audit appraisal of the articles/ornaments pledged in the aforesaid gold loans revealed that the jewellery was either completely fake or the same were not made of pure gold and rather the same were made from metal having coating of gold. Thus loan of ₹50,68,084/- in the aforesaid loan accounts was found to have been obtained against fake loan. It was further found that before sanctioning the aforesaid gold loans, the complainant bank had obtained certification from the goldsmiths Deepak Kumar (Deepak Jeweller, Palika Bazar (Sarafa), Jind); and Rajinder Kumar Malhotra (M/s Malhotra Jewellers, Pakika Bazar (sarafa), Jind) [petitioner in CRM-M-27339-2023], Palika Bazar and they vide their certificates had certified the ornaments pleaded to be of gold, which fact was found to be absolutely incorrect and misleading. This way the complainant-bank had been induced to grant gold loan of ₹50,68,084/- against a fake gold and for that purpose the two jewellers i.e. Deepak Kumar and Rajinder Kumar Malhotra induced the ICICI Bank.

5. Necessary FIR was registered. Investigation was carried out. Ram Mehar @ Ramher and Ankush son of Jasbir were arrested on 01.04.2023. On investigation, both of them suffered disclosure statement. It was revealed from their disclosure statements that Ram Mehar @ Ramher had met and conversed with jewellers Deepak Kumar and Rajinder Kumar Malhotra, who asked him to apply gold loan against gold ornaments through ICICI Bank, Branch Nirjan, stating him that they are the valuators for the ICICI Bank and will assess the gold ornaments as 22 carat gold and will prepare the report accordingly to facilitate the loan application and that

on payment of the loan amount, they will prepare another 22 carat gold report for same ornaments at the time of receiving back the same. The idea behind the entire scheme was that the benefits obtained from the loan shall be shared by all four of them. Ankush, who is the nephew of the wife of Ram Mehar @ Ramher, also became part of this conspiracy. The disclosure statement of Ram Mehar @ Ramher also resulted in recovery of ₹70,000/- from him, whereas Ankush got recovered ₹60,000/-. After concluding investigation, final report under Section 173 CrPC has already filed against accused Ram Mehar @ Ramher and Ankush.

Contention on behalf of Rajinder Kumar Malhotra (petitioner in CRM-M-27339-2023)

6. (i) It is submitted on behalf of the petitioner Rajinder Kumar Malhotra seeking anticipatory bail that he is the certified valuator of numerous banks; that as per the allegations, Ram Mehar @ Ramher and Ankush availed 15 gold loans during the period of 21.11.2022 to 13.12.2022 to the tune of ₹50,68,084/- and that he (petitioner) conducted gold appraisal only qua one gold loan on 02.12.2022 within the premises at the branch office at village Nirjan by acting within the guidelines and parameters laid down by the complainant-bank as per their internal circular.

(ii) Ld. counsel has pointed out towards the various parameters as provided by the complainant bank qua 'appraisal' as per which the appraisal is required to be done within the designated area under CCTV camera and further, minimum test (stone and acid test) is to be performed on each article. Ld. counsel contends that in this case also the appraisal was done in the presence of bank officials under CCTV camera as per the internal circular and that respondent No.2 has already provided CCTV footage to the investigating agency and viewing the video, it is clear that petitioner had performed all the tests as per internal circular and within the bank premises. Ld. counsel further submits that by applying the stone and acid test, only the upper layer or the ornament can be tested and not the internal matter and since these were the only test which were to be applied as per the parameter of appraisal, so the petitioner cannot be faulted.

(iii) Ld. counsel further contends that at the time when internal audit of gold pledged with the bank was done, petitioner or the loanee was not called. Apart from this, petitioner is not the beneficiary of any of the sanctioned loan amount and that petitioner only gets the commission as per the rates mentioned in the appointment letter. Ld. counsel contends that petitioner is ready to join the investigation and that in all the circumstances, he be allowed anticipatory bail

<u>Contention on behalf of Ram Mehar @ Ramher (petitioner in CRM-M-40826-2023)</u>

7. On behalf of Ram Mehar @ Ramher, it is contended by ld. counsel that internal audit of the gold pledged with the bank was not done in his (petitioner) presence; that investigation is already completed; that petitioner is in custody for the last more than six months; that offences in question are triable by Magistrate; that trial may take time to conclude and in all these circumstances, petitioner be allowed bail.

<u>Contention of the State</u>

8. (i) Strongly opposing the bail petition, ld. State counsel has drawn attention towards the sanctioned letters issued to the loanee Ramher @ Ram

Mehar, whereby he agreed to various terms and conditions of the loan. One of the conditions is as under: -

> *"ICICI Bank has right to open the same in which the assets will be kept, in my absence, for the purpose of second appraisal/audit, in the presence of its various officials and appraisers and I have no objection to the same and shall not raise any claim against ICICI Bank."*

(ii) Ld. State counsel contends that in view of the aforesaid terms and conditions of the loan as agreed by the loanee-petitioner Ram Mehar @ Ramher, none of the petitioner has a right to challenge the right of the ICICI Bank to conduct the internal audit, in absence of the loanee or the initial appraiser. Ld. State counsel further submits that no doubt appraisal might have been done by the petitioner-Rajinder Kumar Malhotra by applying the minimum test of stone and acid test, but it is the petitioner-Rajinder Kumar Malhotra, who certified the ornament being pledged to be gold. The bank officials, in whose presence, the appraisal was done by the petitioner-Rajinder Kumar Malhotra, were layman and they could not be in a position that whether acid and stone test have been applied properly or not and even if it applied properly, certificate of appraisal is inconsonance with the results of the test or not.

(iii) Ld. State counsel submits that petitioner Rajinder Kumar Malhotra along with other jeweller Deepak Kumar facilitate the co-accused Ram Mehar @ Ramher and his relative Ankush to obtained as many as 15 gold loans to the tune of more than ₹50 lakh and thus cheated the complainant-Bank and so custodial interrogation of the petitioner-Rajinder Kumar Malhotra is required and that considering the circumstances of the case, petitioner-Rajinder Kumar Malhotra does nto deserve to be granted benefit of regular bail.

9. I have considered submissions of both the sides and have appraised the record carefully.

Conclusion in CRM-M-27339-2023

10. Taking up the case of Rajinder Kumar Malhotra, who appraised the ornaments to be the real gold to facilitate the loan and which have been found to be fake during internal audit by the bank, the contention of ld. counsel that on applying the stone and acid test, only the upper layer of the ornament can be tested and it is not possible to comment about the metal and so there is no fault of the appraiser, is absolutely devoid of any merit. The words used in the parameters laid down for appraisal are *'stone and acid test is mandatorily conducted on each article'*. The aforesaid words no doubt clearly mandates that acid and stone test is to be conducted on each article, but the said parameter does not prohibit the appraiser from applying any other test. It is the certification of the appraiser on which the bank relies before sanctioning and disbursing loan against the ornaments being pledged. Being layman, the bank officials cannot be in a position to comment that certificate of appraisal being issued by the appraiser is as per the test or not, even if the appraisal is conducted in their presence and under CCTV surveillance. It is only the appraiser, who can certify as to whether on the basis of test conducted by him, the ornaments being tested by him, is gold or not. In the present case as petitioner-Rajinder Kumar Malhotra certified the ornaments placed by co-accused Ram Mehar @ Ramher to be gold, which on second appraisal (internal audit) by the bank has been found

to be fake, *prima facie* it is clear that on the false certification of the petitioner, the bank was induced to grant loan to the Ram Mehar @ Ramher. Having regard to the nature of allegations against the petitioner and the gravity of offence, the custodial interrogation of the petitioner-Ram Mehar @ Ramher is necessary and having regard to all the circumstances, this Court does not find it fit to grant anticipatory bail to the petitioner as such, the prayer made by Rajinder Kumar Malhotra (petitioner in CRM-M-27339-2023) for grant of anticipatory bail is hereby declined.

Accordingly, petition i.e. CRM-M-27339-2023 is hereby dismissed.

Conclusion in CRM-M-40826-2023

11. Coming to the case of the petitioner- Ram Mehar @Ramher, he along with his relative Ankush, availed as many as 15 loans for total amount of ₹50,68,854/- during the period 21.11.2022 to 13.12.2022 against ornaments by representing them to be of gold, but which on internal audit by the bank, later on found to be fake. The disclosure statement of the petitioner-Ram Mehar @ Ramher and that of his relative-co-accused Ankush revealed that they were part of conspiracy with Bank valuators/appraisers Rajinder Kumar Malhotra and Deepak, who certified the ornaments being pledged to be of gold and thus facilitated in the grant of loan. Even if the offence in question is triable by Magistrate, but having regard to the modus operandi in which offence has been committed and the huge amount involved in the fraud, but without commenting anything further on the merits of the case, this Court is not inclined to grant regular bail to the petitioner.

Accordingly, petition i.e. CRM-M-40826-2023 is dismissed.

Pending application(s), if any, shall stand disposed of.

A photocopy of this order be placed on the files of other connected cases.

(DEEPAK GUPTA)
JUDGE

30.10.2023
Vivek

1. Whether speaking/reasoned? *Yes*
2. Whether reportable? *Yes/No*