Neutral Citation No. 2023:PHHC:159205

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: December 05, 2023
Date of Decision: December 12, 2023

CRM-M-41136-2023

Amandeep Singh Sran …Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Prateek Gupta, Advocate for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 Cr.P.C., petitioner prays for his release on regular bail in case FIR No.29 dated 16.01.2019 under Sections 420, 406 and 120-B of IPC, besides Section 3 of the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013 (hereinafter referred as 'the Act'), registered at Police Station Faridabad Kotwali, District Faridabad.

2. FIR has been lodged on the complaint of Rajesh Thakur and others against owners and Directors of HBN Dairy and Allied Company Limited (hereinafter referred as 'the Company') alleging to have caused financial loss to lakhs of people by taking money in RD Schemes. It was alleged that company induced innocent people to invest their money with assurance to return the amount with interest, but the Company did not honour their commitments and even the principal amount was not

returned. It was further stated by the complainant that the Company through its 08 Branches had collected crores of rupees and on the pretext of pendency of proceedings before the Hon'ble Supreme Court and SEBI, was not returning the money.

3. It is contended by learned counsel for the petitioner that there is long delay in lodging the FIR, inasmuch as complaint was presented on 30.03.2018, but FIR was lodged on 16.01.2019. Petitioner is in judicial custody in Raipur, Chhatisgarh since 2015 and has been in custody ever since then. His production warrants were obtained and then he was arrested in this case on 20.05.2019. Learned counsel contends further that after necessary investigation, challan had already been filed on 18.07.2019 and it was found during investigation that the Company had got illegally deposited money in its bank accounts from the investors and thus, cheated the investors. As per investigation, the Company and its Directors cheated the complainant to the tune of ₹42,03,795/- by hiring the agents. The amount was deposited in two bank accounts, which were being operated by the petitioner and three others. Petitioner was also one of the Directors of the Company since 2012. Learned counsel further contends that 30 other similar FIRs have been registered against him on similar allegations in different States. The Haryana Police had obtained record from the Raipur Police and thereafter, Section 3 of the Act was added, as it has been alleged that the Company induced the investors by floating FD/RD Schemes promising high rate of interest and issued bond papers. No permission was obtained by the Company to run the Scheme.

4. Learned counsel also contends that the Company incorporated in December, 1998, having a share capital of ₹11 crores and paid-up capital of more than ₹10 Crores, used to invite applications from

customers/ investors for purchase and upbringing of the capital under its investment scheme. In 2009, the Reserve Bank of India forwarded a complaint to SEBI against the Company alleging illegal mobilization of funds from the public. After collecting necessary information/documents, the SEBI found the scheme floated by the Company to be within the purview of Collective Investment Scheme (CIS), vide its order dated 12.02.2015 and ordered the Company to abstain from collecting any money from the public. All the CIS schemes run by the Company were ordered to be wound up and all the money mobilized through such schemes to be refunded to its investors. In the appeal against the said order dated 12.02.2015 filed by the Company before the Securities Appellate Tribunal, Mumbai (for short 'the Tribunal), the Company to show its bonafide offered to deposit title deeds of the immovable properties. Learned counsel contends that the Company never intended to cheat the investors since inception, as the investment schemes floated by the Company were providing promised rate of interest to its investors.

5. Learned counsel further contends that the entire amount as stated in the CIS across India has been deposited with the SEBI in the form of assets as well as original title deeds and that the Tribunal, vide its judgment dated 28.06.2017 also noted that an amount of ₹50 lacs had been deposited with SEBI along with the title deeds of the immovable properties, which would be sold for refunding the money collected from the investors. Learned counsel contends that as the petitioner complied with the directions of the SEBI, so it is for SEBI to disburse the amount towards satisfaction of the claim.

6. Learned counsel further contends that in a petition under Section 7 of the IBC, 2016 filed against the Company by one of the

financial creditors, NCLT, Principal Bench, New Delhi, vide its order dated 14.08.2018 declared a moratorium in terms of Section 14 of the Code. An interim Resolution Professional was appointed and NCLT directed the Company not to alienate, dispose, transfer any of its assets or beneficial interest and further barred any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). SEBI was also directed to hand over the title deeds to the Resolution Professional appointed by the NCLT, vide order dated 14.08.2018. Said order was challenged before the Hon'ble Supreme Court and vide order dated 12.06.2019, status quo has been ordered by the Hon'ble Supreme Court.

7. Learned counsel further contends that on similar set of allegations, as many as 30 FIRs have been registered against the Company across the country in different States, details of which have been given in para-No.11 of the petition. Petitioner filed a writ petition (Criminal) No.341 of 2022 before Hon'ble Supreme Court for clubbing the said 30 FIRs against the petitioner, which is still pending. Learned counsel contends further that petitioner is behind the bars since 2015 in the FIR registered at District Raipur, Chhatisgarh and is in custody in the present case since 20.05.2019. Till date, no prosecution witness has been examined so far and thus, further incarnation of the petitioner would violate Article 21 of the Constitution of India. Trial is still at the initial stage. Learned counsel for the petitioner further contends that case of the prosecution is based upon documentary evidence, which has already been collected and that no recovery is to be effected from the petitioner nor his custody will serve any purpose.

8. Learned counsel has also referred to ***"Sanjay Chandra v.***

*CBI", 2014(4) RCR (Criminal) 899,* wherein the Supreme Court dealt with the issue of bail in economic offences and held that though accused fleeing from justice and possibility of tampering with witnesses should be a relevant consideration but the Court also held that detention in jail custody for an indefinite period violates Article 21 of the Constitution of India. The Hon'ble Supreme Court further held as under: -

> *"28. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI."*

With all the aforesaid submissions, learned counsel for the petitioner has prayed for ordering the release of the petitioner on bail.

9. Learned State counsel has strongly opposed the bail petition not only by pointing out towards the gravity of the offence, but also towards the criminal antecedents of the petitioner, who is involved in as many as 30 FIRs, registered in different States. However, it is conceded on the basis of status report that no prosecution witness has been examined so far. It is further contended that in case, petitioner is released on bail, he may influence the material witnesses, which would cause serious prejudice to the case of the prosecution. Learned State counsel has further referred to ***"Parmod Kumar Saxena v. U.O.I. and Ors.", 2008(63) ACC 115 (SC),*** so as to contend that mere long period of incarnation in jail cannot be termed *per se* illegal and such detention in jail even as under-trial prisoner would not be violative of Article 21 of the

Constitution of India, as it is permissible under the Code of Criminal Procedure. However, it is conceded on the basis of custody certificate as produced from Central Jail, Raipur, where the petitioner is presently lodged, that petitioner is in custody in the present case for the last 04 years, 01 month and 21 days.

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

11. No doubt that as per allegations, petitioner being one of the Directors of the Company, duped the numerous investors across the country for huge amount. However, at the same time, Court cannot ignore the long incarnation of the petitioner in jail, which is now more than 04 years and also the fact that not even a single witness has been examined so far. The matter regarding clubbing of 30 FIRs against the petitioner lodged in different States, stated to be based upon the similar allegations, is pending before the Hon'ble Supreme Court. Title deeds regarding the properties held by the Company are already stated to have been deposited with SEBI. The case is mostly based upon the documentary evidence. The continued detention of the petitioner is not going to serve any useful purpose. At the same time, having regard to gravity of the offence in the multiple FIRs against the petitioner, stringent conditions need to be imposed for releasing him on bail.

12. Keeping in view all the facts and circumstances as noted above, but without commenting anything on the merits of the case, petition is accepted. Petitioner is directed to be released on bail on furnishing requisite bonds to the satisfaction of learned Trial Court, subject to the following conditions: -

*1. Petitioner shall furnish personal bonds in the sum of ₹1 crore with two sureties of the like amount. The petitioner as* *well the sureties shall produce either the title deeds of the immovable property, which should be worth at least of ₹1 crore each; or bank guarantee to the tune of ₹1 crore each; or FDRs issued by any nationalized Bank with renewal facility. The said FDRs shall not be encashed till the disposal of the case.*

*2. Petitioner shall not leave the country without permission from the Court and shall deposit his passport before the Court concerned. In case, passport has already been impounded by any authority, necessary certificate shall be produced before the Court concerned in this regard.*

*3. Petitioner shall provide his e-mail address and mobile number to the Court concerned and shall not change the same. In case, for any reason, e-mail address or mobile number is changed by the petitioner, he shall intimate the same to the Court within a week positively.*

*4. Petitioner shall not make any attempt whatsoever to approach any witness associated with this case, directly or indirectly; or influence any such witness in any manner whatsoever.*

Allowed accordingly.

December 12, 2023 (DEEPAK GUPTA)
sarita JUDGE

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