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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48464-2023 (O & M)
Date of decision: 22.11.2023

Jaswinder Singh Dang

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Preetinder S. Ahluwalia, Advocate,
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.1 dated 21.02.2023 under Sections 406, 420, 465, 467, 468, 471, 384, 120-B IPC registered at Police Station Punjab State Crime Police Station SAS Nagar, District Crime Wing.

2. The brief facts of the case are that a complaint dated 30.11.2022 was submitted to the investigating agency which reads as under:-

“First Information contents (Attach separate sheet, if necessary):

Copy of complaint. Dated:30.11.2022 To, Shri B. Chandrashekhar, ADGP, Prison, Punjab, Sector 17, Chandigarh, Subject Complaint against (i) Dharmendra Singh Sandhu son of Shri Balvinder Singh Sandhu (DINNO. 09454271) (ii) Sandeep Singh Mahal son of Shri Gurmej Singh (DIN 09164888), (iii) Hirday Pal Singh Dhillon son of Shri Raminder Singh- Dhillon(DIN 08447082), (iv) Sukhdev Singh

son of Raghbir Singh (DIN 00498732), all directors of PACL Limited, (v) Smt.Kamaljit Kaur W/o Sh Sukhdev Singh and (vi) Jaswinder Singh Dang (M. No. 095526) Chartered Accountant and their associates for forging, fudging and fabricating the Resolutions, Minutes of Extraordinary General Body Meeting allegedly held on 01.01.2022 and consequently, forging and filing FORM-DIR-12 and the Resolutions under the Digital Signature of disqualified director Sukhdev Singh by forging his signature on FORM DIR-12 in respect of Company PACL Limited. Company PACL Limited having CIN U70101RJ1996PLC011577 having its registered office at; 22,3rd Floor, Amber Tower, Sansar Chandra Road, Jaipur, Rajasthan. Note: The Directors of PACL Limited Including Mr. Sukhdev Singh (DIN No.00498732) were disqualified under Section 164 (2) (a) of the Companies Act 2013 by the ROC Jaipur and as per the list published on 25.11.2019, the name of Mr. Sukhdev Singh (DIN 498732) is appearing at serial No. 728 in the list of disqualified Directors. (List attached with). Sir, the undersigned is the authorized Director of Great Himalayan Estate Pvt. Ltd., one of the active shareholders having 2.71% shareholding in the Company named PACL Limited (hereinafter referred to as PACL and/or the Company) and by way of the present complaint. I wish to bring to your notice, a serious fraud and forgery committed in public of ROC Jaipur and the stakeholders of PACL and for that matter against public at large, brief facts thereof, are as under: 1. That I have come to know that the abovementioned people namely (i) Dharmendra Singh Sandhu (DIN No. 09454271) (ii) Sandeep Singh Mahal (DIN 09164888), (iii) Hirday Pal Singh Dhillon (DIN 00447082), (iv) Sukhdev Singh (DIN 00498732) are representing themselves as the directors of PACL. 2. That the abovementioned people in collusion with each other and in conspiracy with the former auditor/company secretary of the company had fabricated and manufactured fake documents i.e.

minutes of the extraordinary General Meeting of the members of the company, forged resolution of the company and thereafter, on the basis of such fake documents, they have taken over the control of the management of PACL without any valid extraordinary General Meeting of the company requisitioned, convened or held on the given date i.e. 01.01.2022 and have fraudulently claimed and filed documents to assert themselves as Directors of the company without any authority, power or jurisdiction to do so. 3. That the relevant provisions of the law for holding the Extraordinary General Meeting of a public Company are prescribed under Section 100 of the Companies Act 2013 wherein the pre-requisite conditions are mentioned for requisitioning, convening and holding a valid extraordinary general meeting of the members of the company are prescribed 4. That section 101 of the Companies Act, 2013 prescribes that a general meeting of the company can be called by giving not less than clear twenty one day Notice either in writing or electric mode to all of the Company as per the register. 5. That the 'quorum' to constitute a valid Annual General Meeting (AGM) is prescribed in section 103 of the Companies Act, 2013. 6. That the Minutes of extraordinary General Meeting allegedly held on 01.01.2022, filed with ROC Jaipur are forged and are void ab initio. No Extra ordinary General Body meeting of the members was convened nor held on 01.01.2022 at Jaipur as claimed in the Minutes filed with the ROC. 7. That the Company PACL Limited has a shareholding divided in shares of face value of Rs. 10 and therefore, the extraordinary meeting can be called only on requisition from members holding 10% active shareholding in the company. The paid-up capital of the company is Rs. 120,36,70,320-at par of face value of Rs. 10 and thus, the company has 12,03,67,032 shares of face value of Rs. 10. In order to call extraordinary general body meeting of the members of the company, the requisition is required to be from members holding 1,20,36,704 shares ie., 10% active

shareholder out of total shareholding of the company as prescribed under section 100 of the Companies Act, 2013. 8. That in the present case no such requisition was received by the shareholder of company holding the extraordinary general body meeting nor any such letter was ever received at the registered office of the Company. 9. That the abovementioned people by hatching criminal conspiracy to defraud and with ulterior purposes forged the FORM No. DIR-12 and led the same to claim directorship of the company by digitally fling the FORM No. DIR-12 under the digital signature of Mr. Sukhdev Singh knowingly that Sukhdev Singh was already lodged in jail and already disqualified as director of the company under section 164 (2) (a) of the companies act as reflected in the list published for ROC Jaipur. The Directors of PACL, Limited including Mr. Sukhdev Singh (DIN No. 00408732) were disqualified under Section 164 (2) (a) of the Companies Act 2013 for the ROC Jaipur as per the list published on 25.11.2019 the name of Sukhdev Singh (DIN 498732) is at serial No. 728 of the list. 10. That as per the section 164 of the Companies Act the disqualification of director Mr. Sukhdev Singh is for five years. That the Chartered Accountant has put his digital signature on the FORM No. DIR- 12 and has filed the said form inter alia declaring that he has gone through with the provisions of the companies act 2013 and rules made there under and has certified the contents thereof in collusion with the above mentioned alleged directors of company in furtherance with the criminal conspiracy hatched. The declaration is self-contradictory so much so that the abovementioned Sukhdev Singh is lodged in Jail and the document annexed Le. the resolution itself states that all the previous directors of the company are already disqualified under section 164 of the companies act yet he files the form with ROC under digital signatures of disqualified director Sukhdev Singh. All of them are also liable to be prosecuted

under section 107 of the companies act. 11. That Great Himalayan Estate Pvt. Ltd., is an active shareholder in the company with 2.71% Shares in PACL Ltd, and is eligible to vote in the annual general body meeting/extraordinary general body meeting of the company thus is entitled to be served the notice of the annual general body meeting and/or the extraordinary general meeting of the company as the case may be. No such Notice was served upon the applicant thus the alleged extraordinary meeting allegedly dated 01.01.2022 is null and void if any such meeting was ever held though a matter of fact no such meeting was requisitioned, convened or held on 01.01.2022. 12. It is also not out of place to highlight that the conspirator and the main accused behind the conspiracy who has hatched and perpetuated the illegal appointment, Le. Mr. Sukhdev Singh was disqualified to act as director under Section 164 of the Companies Act, 2013 by ROC Jaipur on 25.11.2019 for a period of 5 years or more which is at Sr. no. 728 on account of default occurred in PACL Limited which is still subsisting and despite the said disqualification and the continuing default, the illegal appointments were made from the DSC of Mr. Sukhdev Singh who is behind bar from January 2016 and is under judicial custody. Thus, the declaration given by Mr. Sukhdev Singh while digitally signing the said form DIR-12 was wrong and incorrect and per illegal w.r.t to the requirement of Companies Act, 2013 and the compliance of rules made thereunder. It is necessary to print out that a person disqualified to act as director authenticated and signed the form DIR-12 illegally appointing directors in a company which is under serious litigation is a great prejudice to all the stakeholders of the Company including the present complainant. 13. It must also be brought on the record that the so called shareholder who requisitioned the EGM mandated by less than 10% active shareholders under Section 100(2)(a) of the Companies Act, 2013 and as such the purported EGM is invalid

and non-est in the sys of law. It is stated that the said bogus meeting has been convened and results have been called upon basis of the non active struck off companies) shareholders which are corporate entities and not entitled to do any business or transaction since the directors are suspended on account of striking off the companies. 14. That it is further stated that the so called EGM has been sought to be convened at the registered office of the Company (PACL Limited), however, no such meeting ever happened and is only a paper meeting which is bogus and in clear derogation of the provisions of the Companies Act, 2013 and the rules made there under. Therefore, in these circumstances, it is highly important that a criminal conspiracy involving stakes of public at large must be handled in strict adherence of the prevailing laws and the wrong doers must be prosecuted. The legal acts of the appointments are thus liable to be struck down and the form DIR- 12 needs to be cancelled and requires renunciation of the said form DIR-12. 15. That the abovementioned people in connivance with each other and in connivance with their associates have committed fraud in relation to the affairs of the Company PACL Limited by acting in concert with each other, by concealing material facts and by creating and fabricating documents i.e. minutes of the extraordinary general meeting, form 12 and submitting the same, knowingly with the office of ROC, Jaipur with ulterior purposes to cause wrongful and legal gains to themselves and their associates and wrongful loss to the shareholders of the company, general public and crores of the investors of the company and jeopardizing the Interest of the company and its shareholders, investors by intentionally and fraudulently claiming the director ship of the company on the basis of forged and ex facia illegal documents and by intentionally filing false documents with the ROC have contravened provisions of the Companies Act punishable under section 167, 447 and 448 of the Companies Act, within

jurisdiction of your esteemed office Le. ROC, Rajasthan, Jaipur, 16. That the undersigned has come to know that the aforesaid persons in collusion with each other and in collusion with the Chartered Accountant/company secretary of the company at the behest of some miniscule shareholders of the company are disposing of attached assets of the company and even unattached assets of those unattached companies which are still supposed to be attached by CBI and Lodha Committee any time as investigation is still going on and misappropriating the sale proceeds in utter violation of the directions/orders of the Hon ble Supreme Court dated February 2, 2016 in the matter of in the matter of CA No. 13301 of 2015 in the matter of "Subrata Bhattacharya Va. SEBI. 17. It is humbly requested that your esteemed office take appropriate action against above mentioned persons for knowingly making forged documents, filing the same before ROC with ulterior purposes to claim the directorship of the company having assets worth thousands of crores of rupees and in grab of being reflected as directors of the Company PACL Limited in the official records of ROC/MCA are clandestinely and fraudulently selling off the assets of the company and also by opening bank accounts etc. in the name of PACL/other companies and misappropriating the sale proceeds in utter violation of the orders of the Hon'ble Supreme Court dated 02.02.2016 in the matter of CA No. 13301 of 2015 in the matter of 'Subrata Bhattacharya Vs. SEBI, 18. That it is pointed out that the Hon'ble Supreme Court of India vide order dated 25.07.2018 had restrained all the director/promoters/agents/group and/or associate companies to sell/alienate/transfer any of the properties wherein PACL hiis in any manner, a right/interest situated within or outside India in any manner or form however, the lol act (complained) is completely violative of the directions given by the Hon'ble Supreme Court and against the spirit of the order so passed (order attached with 19. That seeing the conduct and the

peculiar circumstances of the case, even SEBI was inclined and had passed necessary orders on 17.07.2018 against the directors and promoters of PACL in which details of all the movable and Immovable properties held by defaulter and charges if any were supposed to be submitted to SEBI, CBI and Lodha Committee further to be attached, includes the promoter against whom the present complaint has been made, i.e. Mr. Sukhdev Singh, on the Instructions and behest of whom, all the egal appointment of directors has been made in PACL. It is pertinent to highlight that the said so called appointments has been made by using the DSC of Mr. and therefore, it is more imperative to strike off and nullify the said form DIR-12 and the frivolous and bogus board resolutions. (order attached with) 2011 is important to red tag the fact that the so called appointments has been made so as to benefit and gain illegal gains to the group of Mr. Sukhdev Singh so that he can achieve the sinister motive of hiding all movable and immovable assets of all directors of PACL including himself and alienating the unattached assets of the Company! PACL/Group Companies while usurping the power of the Board of Director by means of appointing the person in his control and acting on his instructions. 21. That it is also astonishing see that how those illicit appointments have been made against the spirit of law and the categorical order! directions given to keep the Company as it is without changing the structure which impliedly includes the Board of Director along with asset structure of PACL. 22. Thus, it is evident from the above stated facts, that all the above-mentioned people are liable to be prosecuted for violations of the provisions of Companies Act, 2013 punishable under section 167, 447 and 445 of the Companies Act. The FORM DIR-12 filed with the ROC is able to be stuck off and be declared null, void ab initio and all acts done after the illegal appointments by the aforementioned people be declared nullity. 23. That since it is apprehended that

the afore stated people appointed illegally whose name has been written in the complaint mentioned on the top will be alienating the asset/properties of the Company against the provisions of Section 180 of the Companies Act, 2013, thus, their illicit appointment be cancelled immediately and the persons illegally appointed be declared as disqualified in terms of Section 164 of the Companies Act, 2013 since the so called appointment has been illegally made and blatantly against the provisions of Companies Act, 2013, 24. With the hope that yourself will act fast and will Initiate appropriate action against the aforementioned people and their associates for the violations of the provisions of the Companies Act, 2013 and to safeguard the rights and interests of the majority of shareholder of the company besides the crores of investors /customers of the company who are eagerly awaiting refund of their monies invested in the schemes of the company. Thanking you, (VIRENDER SETHI) Mobile No.9650029407 Director of Great Himalayan Estate Pvt. Ltd., having its registered office at 83-A, F/F, Shivaji Enclave, Delhi-110027 greathimalayan2002@gmail.com, shareholder of PACL Ltd.”.

Based on the aforementioned complaint, the enquiry was marked pursuant to which the instant FIR came to be registered under Sections 406, 420, 465, 467, 468, 471, 384 and 120-B IPC.

3. The learned counsel for the petitioner contends that there are two allegations against the petitioner. Firstly that there was fabrication of the documents pertaining to the minutes of meeting held on 01.02.2022 (Annexure P-3) which clearly does not concern the petitioner. The second allegation against the petitioner is that the Form DIR-12 (Annexure P-6) had been uploaded with the forged digital signatures of one Sukhdev Singh who had been confined in jail and the said signatures had been wrongfully

certified by the petitioner being a Chartered Accountant, even though, Sukhdev Singh had been disqualified under the Companies Act. He contends that even this allegation levelled against the petitioner is completely baseless. The digital signatures in question had been created under the orders of the Court dated 23.12.2021 (Annexure P-5) and had not been forged. Taking the allegations to be correct, a mere perusal of Form DIR-12 would show that the petitioner could be liable for action under Section 448 of the Companies Act at best for wrong certification. The conduct of the petitioner had been enquired into by the ROC which had closed the complaint against him thereby exonerating him as was evident from E-mail dated 30.10.2023 (Annexure P-9). Even the complainant in his complaint had sought prosecution for violation of Sections 167, 447 and 448 of the Companies Act. Be that as it may, as the petitioner was a professional Chartered Accountant, criminal proceedings ought not to have been initiated against him for any act done in his professional capacity in the absence of any tangible evidence of conspiracy. He places reliance upon the judgments in '*Central Bureau of Investigation Hyderabad versus K. Narayana Rao 2012 (4) RCR (Criminal) 601 and Kulamani Parida versus State of Odisha 2022(3) ILR (Cuttack) 1303*'. He further contends that the petitioner was in custody since 18.07.2023, the report under Section 173(2) Cr.P.C. stood submitted and none of the 46 prosecution witnesses had been examined so far. Therefore, the trial of the case was not likely to be concluded anytime soon. As the case was triable by the Court of a Magistrate, he was entitled to the concession of bail. Reliance is placed on the judgment in "*Maninder Sharma versus State Tax Officer, State Tax, Mobile Wing, Jalandhar, Punjab, (CRM-M-24033-2021 decided on 31.08.2022)*".

4. The learned counsel for the State, on the other hand, contends that the petitioner in conspiracy with the other accused committed the offences in question. The nature of the allegations levelled against him did not entitle him to the grant of bail as there was sufficient evidence available against him. He, however, concedes that the petitioner was a first-time offender, in custody since 18.07.2023, that none of the 46 prosecution witnesses had been examined so far and that the case was triable by the Court of a Magistrate.

5. I have heard the learned counsel for the parties.

6. This Court in the case titled as ***Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab bearing CRM-M24033-2021(O&M) Decided on 31.08.2022*** has held as under:-

“Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts) , in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant.”

7. The veracity of the allegations levelled against the petitioner and his co-accused shall be adjudicated upon during the course of the trial. Admittedly, the petitioner is in custody since 18.07.2023, the report under Section 173(2) Cr.P.C. stands filed but none of the 46 prosecution witnesses have been examined so far. Therefore, the trial of the present case is not likely to be concluded anytime soon. The case is triable by the Court of a Magistrate. No serious apprehension has been expressed by the State that

the petitioner would abscond from justice, tamper with the evidence or influence witnesses in case he is granted the concession of bail. The petitioner is also a first-time offender with no other case registered against him. In this situation, his further incarceration is not required.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Jaswinder Singh Dang, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

November 22, 2023
sukhpreet

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