

102

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM M – 49081-2023
Date of decision: 16.10.2023*Balvinder Kumar**.....Petitioner**Versus**State of Haryana**.....Respondent***Coram: Hon'ble Mr. Justice Rajbir Sehrawat**

Present: Mr. R S Mamli, Advocate for the petitioner

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Rajbir Sehrawat, J. (Oral)

The present petition has been filed under Section 438 of the Code of Criminal Procedure, praying for grant of anticipatory/pre-arrest bail to the petitioner in case FIR No. 0351 dated 28.05.2022, registered under Sections 406 and 420 of the Indian Penal Code (Sections 467, 468 and 471 IPC), at Police Station Thanesar Sadar, District Kurukshetra (Annexure P-1).

It is submitted by counsel for the petitioner that the case against the petitioner is totally false and concocted. The petitioner is not involved in the crime as alleged against him. Even as per the story of the prosecution, the complainant is not even alleged to have transferred any money to the petitioner either through bank transaction or under any receipt in writing. There is absolutely no evidence even claimed by the complainant; qua having paid any money to the petitioner. The only assertion of the complaint is that at one point of time, the petitioner had even assured him to repay the money and, in lieu of that, the petitioner had also issued the cheques.

However, those cheques are not even issued from the bank account of the

petitioner. In fact, the said cheques belong to one Jarnail Singh son of Shri Jadha Ram, resident of Village Udarsi, Tehsil Thanesar, District Kurukshetra, who is also a farmer and is selling his agricultural produce to M/s Om Parkash Ramesh Chand, Commission Agent, Shop No. 82-B, New Grain Market Kurukshetra, in which, brother of the complainant, namely, Sunil Kumar is one of the partners. The petitioner is also a farmer and is selling his agricultural produce to the same agency. Therefore, it is only the brother of the complainant, who has colluded with his brother-complainant and the said Jarnail Singh, who had given the cheques from his bank account, which is statedly signed by the petitioner. However, the petitioner has never signed any such cheque nor could he have signed the cheque drawn upon account of any other person. The petitioner, being a farmer, who is surviving on the agricultural produce is not involved in any such business of sending the people abroad. In fact, the petitioner himself had paid a sum of Rs.38,00,000/- to the said Commission Agency, including Rs.18,00,000/- through Bank transaction. Since the petitioner was demanding his money back from the said firm, therefore, brother of the complainant in collusion with the police has falsely got involved the petitioner in this case. There is no other case against the petitioner. The petitioner shall join the investigation as and when called for by the police. Hence, the petitioner deserves to be protected against his arrest.

Notice of motion.

Mr. Krishan Kumar Chahal, Additional Advocate General, Haryana accepts notice on behalf of the respondent State. Mr. Naresh Jain, Advocate has put in appearance on behalf of the complainant.

Counsel for the State, being instructed by SI-Rishipal and being assisted by counsel for the complainant has submitted that the petitioner has committed a huge fraud with the complainant. The petitioner has taken a sum of Rs.80,00,000/- from the complainant on the pretext of sending the entire family of the complainant to United States of America. Not only that, even the *Whatsapp* messages exchanged between the duo suggest that the petitioner had conceded that he was to pay some money to the complainant. The complainant was given cheques by the petitioner duly signed by him, though subsequently, the same were found to be not issued from his own bank account. Therefore, the petitioner had committed another offence of fraud, as well, with the complainant. The petitioner is wrongly asserting that he has to take back the money from the firm of brother of the complainant. Rather, the account of the firm of the brother of the complainant shows that the petitioner himself has availed amounts from the said firm to the tune of Rs.50,00,000/- through Bank transactions. Even in the present dispute, the petitioner had earlier asserted that he had given cheques to the complainant as a security for return of Rs.80,00,000/-, in case, the complainant and his family was not sent abroad by the petitioner. Now, the petitioner has taken a somersault and has started denying the signatures appended on the cheques. Therefore, the petitioner is relying upon the false pleadings and affidavit sworn in by him. However, it is not disputed that there are transactions between the brother of the complainant and the petitioner, including transfer of sum of Rs.18,00,000/- by the petitioner through Bank transaction. It is also not disputed that the complainant has not made any payment to the petitioner through bank transaction or through any other digital or written

means. It is also not disputed that the above said Jarnail Singh, a farmer, is selling his agricultural produce to brother of the complainant.

Since there are disputed questions of fact claimed qua the liabilities and the petitioner, and the complainant does not claim to have paid anything through any tangible transaction; which can be proved on record, as such, therefore, the payment made by the complainant, itself, is a moot point. Moreover, it is also not disputed by counsel for the State that there is no other case pending against the petitioner.

In view of the above, but without commenting anything on merits of the case, the present petition is allowed. In the event of arrest, the petitioner be released on bail, subject to his furnishing personal bonds/surety to the satisfaction of the Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

(Rajbir Sehrawat)
Judge

16.10.2023

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