**102** **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CRM-42718 and 43175-2023 IN/AND**
**CRM-M-49769-2023**
**Date of Decision: 10.10.2023**

Seema Malhotra ...... Petitioner

Versus

State of Punjab ......... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Aalok Jagga, Advocate,
for the petitioner.

Mr. Sandeep, Additional Advocate General, Punjab,
for the respondent.

Mr. Anil Mehta, Advocate, and
Ms. Livleen Brar, Advocate,
for the complainant.

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**RAJBIR SEHRAWAT, J. (ORAL)**

**CRM-42718-2023**

This is an application filed by the applicant/petitioner for placing on record photocopies of loan agreement dated 01.02.2021 and Tax Audit Report dated 30.12.2022 as Annexures P-18 and P-19, respectively.

For the reasons mentioned in the application, the same is allowed and the aforesaid documents are taken on record as Annexures P-18 and P-19.

**CRM-43175-2023**

This is an application filed by the complainant for placing on record certain documents as Annexures R-1 to R-14.

For the reasons mentioned in the application, the same is allowed and the documents are taken on record as Annexures R-1 to R-14.

**CRM-M-49769-2023**

1. The present first petition has been filed under Section 438 of the Cr.P.C. seeking anticipatory bail to the petitioner in case FIR No.224 dated 04.09.2023, registered under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860, at Police Station Division No.5, Police Commissionerate Ludhiana, District Ludhiana.

2. It is submitted by learned counsel for the petitioner that the case against the petitioner is totally concocted. In fact, the petitioner was a Director of the company, namely M/s Stan Autos Private Limited. At that time, the company used to avail short term loan from the complainant. In the process, as many as 19 loans were obtained by the company of the petitioner. Out of that, 18 loans were duly repaid by the company of the petitioner. However, the default happened only in the payment of 19th loan. The said default had happened only due to business of the company had gone down on account of the Covid-19 pandemic. Thereafter, since the company had gone in losses, therefore, the proceedings were initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016, and the matter is still pending before the National Company Law Tribunal (for short, 'NCLT'). Even the complainant has filed his claim before the Corporate Insolvency Resolution Process (CIRP). However, thereafter, the liquidation process has been started. Now, the matter is before the NCLT. Learned counsel has further submitted that for the same amount, the company had issued a cheque in favour of the complainant. On default of the same, the complainant had even initiated proceedings under Section 138 of the Negotiable Instruments Act. The said proceedings are still pending. Now the present FIR has also been got lodged against the petitioner on 04.09.2023

after a delay of about 04 years. The allegation in the FIR is qua misrepresentation being made by the company at the time of securing of the loan and not making the repayment of the said loan amount by the company. However, the petitioner had resigned from the company on 28.09.2019. Even, after resignation of the petitioner from the company, the complainant had renewed the earlier loan. Therefore, that being a fresh agreement between the company and the complainant, the petitioner is simply not involved in the matter any more. It is also submitted by the counsel that the company is governed under the Companies Act. Under the said Act, if there is any issue on the accounts of the company, the same can be raised before the Registrar of Companies under Section 213 of the said Act. However, the complainant has not even approached the Registrar of Companies. Therefore, the petitioner has nothing to do with the repayment or default of the loan by the company, as such. The company was a separate entity and having separate account for which the petitioner cannot be held liable in any manner whatsoever. Otherwise also, the matter pertains to the documentary evidence, therefore, the petitioner's custodial interrogation would not be required in this case. Hence, the petitioner deserves to be protected against her arrest.

3. On the other hand, learned counsel for the complainant has submitted that no doubt there had been earlier transactions between the company of the petitioner and the complainant, even the earlier loans were repaid by the company of the petitioner. However, for the $19^{th}$ loan, the company of the petitioner had made misrepresentation by presenting false and manipulated accounts of the company. At that time, the petitioner was, undisputedly, very much Director of the company. Therefore, the petitioner

cannot be segregated from the transaction of loan merely due to the fact that the petitioner had resigned from the company subsequently. So far as the issue of going to the NCLT and filing of the complaint under Section 138 of the Negotiable Instruments Act is concerned, it is submitted by learned counsel for the petitioner that in those proceedings before the NCLT, the petitioner has raised the claim, which can be redressed only partially. The damage done to the complainant on account of the fraud cannot be redeemed completely in the proceedings before the NCLT. The NCLT would proceed further only on the basis of the accounts and not on the basis of the fraudulent intentions of the Directors of the Company. In fact, on the one hand, the Directors of the Company were showing the company to go down in business and showing increasing losses, and on the other hand, the family of the petitioner was getting hefty amounts in the name of rent of the premises in which the business of the company was conducted. The premises, where business of the company was going on, was owned by one of the members of the family of the petitioner. For that premises, the company was shown to be received hefty rent of Rs.4.8 crores in the year 2017; and lastly, a rent of more than Rs.1.47 crores. Therefore, the company itself was siphoning of the funds from its accounts in favour of the family members of the petitioner, including at the time when the petitioner was a Director of the company. This aspect is clarified from the fact that the premises which was shown to be on a rent of Rs.4.8 crores per annum earlier; is now rented out at a meager rent of Rs.40,000/- per month through a written agreement. Hence, exaggerated withdrawals from the accounts of the company through manipulated transactions is nothing but fraud by the owners of the company, which included the present petitioner, as well. Not only that, the company had even disposed of the inventory worth value of approximately Rs.50 crores, though the sale proceed from that is shown only an amount of Rs.1.59 crores. That disposal of the inventory also happened during the period when the petitioner was a Director of the company. Therefore, it cannot be presumed that intention of the petitioner was not to cheat the complainant right from the day when the $19^{th}$ loan was obtained by the company of the petitioner. The entire transactions, conduct and the finances of the company reflects upon that intention of the petitioner and her colleagues; through the manipulated transactions as submitted above. Learned counsel has also submitted that the complainant was shown certain resolutions regarding seeking of loan and extension of loan, however, there were no such resolutions on the record of the ROC. Therefore, even the record of the company has been fabricated by the company, including at the time; when the petitioner was a Director of the Company. Learned counsel has further submitted that the present case is not only the case in which the petitioner is involved, rather, there are as many as 11 complaints, in which the petitioner is also named as an accused. Out of those 11 complaints, in 04 complaints non-bailable warrants have also been issued against the petitioner.

4. Learned counsel for the respondent-State has submitted that the FIR in question was not registered just on the asking of the complainant. As per the dictum of the judgment of the Supreme Court, since it involves an economic offence, therefore, before registration of the FIR, an inquiry into the matter got conducted through ACP (Civil Lines), Ludhiana. During the inquiry, the Director of the company was called to get her version in the matter, however, the petitioner did not appear to join the inquiry. In that inquiry, it was

found that the record regarding resolution was false. The petitioner and the other accused are only the family members and they have jointly fabricated the documents and records which were presented before the complainant. Accordingly, FIR in question was registered by the police. Learned State counsel has further submitted that the matter involves suspicious transactions, as well as, the records of the company; which are not reflected in the public record filed with the Registrar of Companies, therefore, the custodial interrogation of the petitioner would be very much required to unearth the true dimensions of the involvement of the petitioner in the crime. The investigation is at the initial stage. Unless the petitioner is subjected to custodial interrogation, it would not be possible to unearth the true facts and to arrive at a conclusion, which is required in the present case. Hence, the petitioner does not deserve any concession of anticipatory bail.

5. In view of the facts and circumstances available on the file, records involved in the matter, as well as, the submissions made by learned counsel for the respondent-State and learned counsel for the complainant, this Court does not find this case to be fit for interference in the matter; so as to grant anticipatory bail to the petitioner.

6. Dismissed.

**(RAJBIR SEHRAWAT)**
**JUDGE**

**10.10.2023**
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| Whether speaking/reasoned | Yes/No |
| Whether Reportable | Yes/No |