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

CRM-M-51849-2023
Date of Decision: 12.10.2023

Anuj Bairathi ...... Petitioner

Versus

State of Haryana .... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. R.S.Cheema, Senior Advocate, with
Mr. Arshdeep Singh Cheema, Advocate, and
Mr. Rajiv Kumar Trikha, Advocate,
for the petitioner.

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RAJBIR SEHRAWAT, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.90 dated 23.02.2023, registered under Sections 419, 465, 467, 468, 417 and 120-B of the Indian Penal Code, 1860, at Police Station Sector 65, District Gurugram.

2. It is submitted by learned Senior counsel for the petitioner that the case against the petitioner is totally concocted. The petitioner is not involved in the crime as alleged against him. Even as per the allegation levelled in the complaint, the issue relates to availing of the loan by the company in which the petitioner and the complainant were the only share holders; along with some more family members. The said loan was availed by the company and was encashed in the account of the company in the year 2017. The said loan was even repaid in the year 2018. Therefore, the complainant has not even suffered any loss on account of that loan.

Moreover, since it was a dealing done by the company only, the complainant could not have even raised the grievance qua the said transaction in his individual capacity. Still further, it is submitted by the Senior counsel that the allegation regarding forgery of the signatures of the complainant on the resolution and on the sanction letter is not germane at this stage; because; so far; the signatures of the petitioner has not been got compared with the alleged signatures of the complainant on the said documents. Hence, it cannot be said, by any stretch of imagination, that the signatures of the complainant were forged by the petitioner. Referring to the provisions of Sections 419, 465, 467, 468 and 471 of the Indian Penal Code, 1860, learned Senior counsel has further submitted that under the said sections, the person is liable only if he himself has forged the document or the signatures. The petitioner cannot be punished under those Sections even if the signatures are forged, but the same are not in the handwriting of the petitioner. Moreover, there is no damage or injury caused to the petitioner in the loan transaction. Therefore, the offences under Sections 415 and 463 IPC have even been invoked wrongly; in the matter. It is also submitted by the Senior counsel that although, there are certain allegations regarding the transfer of share of father of the parties in favour of the petitioner, however, the said matter is still pending before the National Company Law Tribunal (NCLT); initiated by the complainant himself. However, in the said proceedings, no interim order has been granted by the Tribunal. The complainant is alleging the forgery qua signatures of his wife as well, which allegedly resulted in transfer of shares of wife of the complainant in the name of the wife of the petitioner, however, regarding that transaction, the wife of complainant has already filed a separate FIR in Jaipur. Therefore, the said aspect cannot; rightly; be even agitated in the present proceedings. In the end, learned Senior counsel has submitted that the present FIR has been lodged by the complainant after a delay of about four years only for the oblique purpose due to the reason that the parents of the petitioner had transferred their shares in favour of the petitioner by excluding the complainant. To force the petitioner to settle the dispute regarding shares of the parents, the petitioner is being harassed by the complainant. Hence, the case against the petitioner is totally baseless. Nothing is to be recovered in the matter, therefore, the petitioner is to be protected against his arrest.

3. Notice of motion.

4. On the asking of the Court, Mr. K.K.Chahal, Additional Advocate General, Haryana, accepts notice on behalf of the respondent-State and Mr. Nitish Sharma, Advocate, assisting counsel of Mr. Jai Vir Yadav, Senior Advocate, accepts notice on behalf of the complainant and filed his power of attorney.

5. It is submitted by learned counsel for the respondent-State; and as supplemented by the arguments of learned Senior counsel for the complainant, that there are specific allegations against the petitioner qua forgery of signatures of the complainant on various documents, as well as, the forgery of signatures of the father of the complainant; for transfer of shares of the father of the complainant in the name of the petitioner. Learned State counsel has further submitted that when the issue was raised,

the police had not straightway recorded the FIR, rather, before that, an exercise in the nature of preliminary inquiry was conducted and the signatures on the disputed documents were got compared with the signatures of the complainant from the Forensic Science Laboratory, Bhondsi. However, the report of the said FSL has substantiated the allegations of the complainant that the signatures on the said documents were not the signatures of the complainant. Even the signatures of the father of the complainant on the disputed documents were got compared with his admitted signatures available in the bank account of the father of the complainant. The FSL reported that even the said signatures of father were forged. It is only thereafter, that the FIR in question was registered by the police. The case involves a huge fraud of about 80 crores of rupees. The investigation is at the initial stage. The police are to unearth the true dimensions of the involvement of the petitioner in the crime. Therefore, the custodial interrogation of the petitioner is quite imperative in the case .

6. Learned Senior counsel for the complainant has supplemented the arguments of learned counsel for the respondent-State by submitting that the forgery in the loan transaction was aggravated by the petitioner by making false representations and supplying the forged documents to convince the complainant that his signatures were not present on the documents, on which, later on, the signatures were found. In the process, the petitioner even sent the e-mails to the complainant assuring that his signatures had not been used anywhere. However, later on, the forged signatures were found present on the documents; as pointed by learned

counsel for the State. The proceedings before the NCLT are before the tribunal of limited statutory jurisdiction. Said proceedings are not any substitute for proceedings for offences. Not only that, later on, the complainant came to know that the petitioner had even obtained the credit card in the name of the complainant, though by furnishing forged documents of the complainant and the mobile phone numbers of two employees of the company. This modality was also adopted by the petitioner to ensure that the loan on the credit card remains in the name of the complainant, but the complainant never comes to know about the issuance of credit card in his name. The extent of the frauds is to be discovered by the police; and the connected material is to be recovered. Therefore, the petitioner does not deserve any protection against his arrest.

7. In view of the facts and circumstances available in the case, as well as, the aforesaid submissions made by the State counsel, as supplemented by the Senior counsel for the complainant, this Court does not find it appropriate to interfere in the matter, so as to grant concession of anticipatory bail to the petitioner.

8. Dismissed.

(RAJBIR SEHRAWAT)
JUDGE

12.10.2023
adhikari

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No