

CRM-M-54971-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210

CRM-M-54971-2023
Date of decision: 23.11.2023

Manmohan Singh Jassar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Preetinder S. Ahluwalia, Advocate,
Mr. I.S.Cooner, Advocate and
Mr. Jaiveer Singh, Advocate,
for the petitioner.

Mr. J.S.Guru, AAG, Punjab.

Mr. Manoj Kumar, Advocate,
for the complainant.

RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed under Section 438 Cr.P.C., seeking anticipatory bail in case FIR No.201 dated 09.10.2023, registered under Sections 406, 420 and 120-B IPC, at Police Station Gobindgarh Mandi, District Fatehgarh Sahib.

2. The basic facts, which are involved in the present case, are that the complainant alleges to have supplied metal scrap worth Rs.2.08 crores approximately, to the firm of the petitioner, named, M/s Jassar Multi Metals. Out of the above-said, an amount of Rs.30.50 lakh is stated to have been paid by the petitioner through cheques drawn upon his bank account. However, an amount of Rs.1,77,69,336/- is not paid. When the complainant raised the issue of non-payment with the petitioner, he issued

CRM-M-54971-2023

two cheques bearing No.000095 dated 06.10.2022, amounting to Rs.27,69,336/- of Kotak Mahindra Bank and cheque No.005646 dated 05.05.2023, amounting to Rs.1,50,00,000/- of Federal Bank. However, out of the said cheques, one cheque defaulted because the payment was stopped by the petitioner and the second cheque defaulted because the petitioner had closed the account itself. Thereafter, the complainant had filed a complaint under Section 138 of the N.I, Act, qua default of one cheque bearing No.000095 dated 06.10.2022. At this stage, the petitioner asserted and got lodged a DDR with the police that some of his cheques had got stolen from his car. The petitioner also came up with another story asserting therein that in fact, he had been cheated by one Manish Vijan Pankaj and Balbir Singh. It was further asserted that the goods supplied by the complainant were further supplied to another firm named M/s Amba Shakti Ispat Limited. The said firm made the payments through cheques issued in the name of the firm of the petitioner. However, above said Manish Vijan and Balbir Singh opened a fictitious account in the name of the firm of the petitioner in A.U.Small Finance Bank, Chandigarh. The cheques given by M/s Amba Shakti Ispat Limited were encashed in the said account and thereafter, even the money from the said account was withdrawn by the said persons, and, thereby, the petitioner has been cheated. Alleging the above-said facts, the petitioner had filed CRM-M-18296-2023 before this Court, in which notice of motion has already been issued. However, after the petitioner had alleged these facts, then the complainant also had moved an application before the police alleging therein that the petitioner was introduced to the complainant by above-said

CRM-M-54971-2023

Manish Vijan claiming himself to be authorized representative of the petitioner. Manish Vijan had assured the complainant that the petitioner will pay the price for the metal at a higher rate than the prevalent market rate. On that assurance, the goods were supplied to the firm of the petitioner. However, after making some initial payments, the petitioner and his wife, who were the partners in the firm M/s M/s Jassar Multi Metals, have refused to pay the balance of the sale consideration for the goods supplied. Hence, the complainant has been cheated. On these assertions, in the first instance, the police conducted the preliminary inquiry to find out as to whether the complaint made by the complainant had any substance or not. After finding substance in the complaint raised by the complainant, the police registered the FIR, involved in the present case, under Sections 406, 420 and 120-B IPC, against the petitioner and his wife. In the said FIR, the present petition for anticipatory bail has been filed.

3. Arguing the case, counsel for the petitioner has submitted that the case involves purely a civil dispute, which cannot be converted into a criminal case. If the complainant asserts some amount to be outstanding, he is free to file a suit for recovery. It is further submitted that the above-said transactions had happened in April, 2021, whereas, the complaint has been lodged in May, 2023, which was converted into FIR only in October, 2023. This delay itself shows that there was no criminality involved in the matter. The complainant has not filed a civil suit for recovery even till today. Moreover, even if, there is allegation of under-payment that, in itself, does not invite the offence under Sections 406 and 420 IPC. The present FIR has been concocted by the complainant to prevent the petitioner from pursuing

CRM-M-54971-2023

his complaint with the police in which he himself had alleged to have been cheated by Balbir Singh and Manish Vijan. Regarding the power of police to arrest the petitioner, the counsel has submitted that since the offences involved in the case are under Sections 406 and 420 IPC, therefore, the same being punishable with imprisonment upto 07 years, the police have to adhere to the process prescribed under Sections 41 and 41-A Cr.P.C. Counsel for the petitioner has relied upon the judgments rendered by the Hon'ble Supreme Court in *Veer Prakash Sharma Vs. Anil Kumar Agarwal and another 2007(3) R.C.R. (Criminal), 960, Hotline Teletubes and Components Ltd. & Others Vs. State of Bihar and another, 2005 (10) SCC 261, SLP (Criminal) No.7042 of 2021, titled as 'Surinder Ahuja Vs. State of Punjab and another', decided on 14.12.2022, and Satender Kumar Antil Vs. Central Bureau of Investigation and another, 2022 AIR (Supreme Court) 3386* and the judgment passed by this Court in *M/s S.K.Rai Engineers and Contractors Jaildar Market and another Vs. M/s S.C.Jain Constructions Company Pvt. Ltd. 2023(1) R.C.R. (Criminal) 56*, to buttress his arguments.

4. On the other hand, counsel for the State, being assisted by SI Harjeet Singh, and being assisted by counsel for the complainant, has submitted that the petitioner has committed a huge cheating with the complainant and has defrauded him of an amount more than Rs.1.70 crore. The petitioner has not even denied having received the goods. Despite that, he has avoided making payments of the consideration for the said goods. In order to avoid the payment, the petitioner has gone to the extent of fabrication of another story of, allegedly, opening of fake account by

CRM-M-54971-2023

someone for siphoning off the money. However, even the said account is in the name of the firm of the petitioner only. Qua the delay in lodging the FIR, counsel for the State has submitted that although the transactions involved in the present FIR, are pertaining to April, 2021, however, neither the goods were supplied in one go nor was the payment of Rs.30 lakh made in one instance. Rather, it was a continuous process in which the petitioner kept on receiving the goods from 07.04.2021 till 24.04.2021 and in the process, he received as many as 50 consignments. To allure the complainant for making further supplies, the petitioner made the payment of Rs.5 lakh on 15.04.2021 from his own bank account, and due to that only, the goods continued to be supplied to him upto 24.04.2021. Although the petitioner continued to make certain payments during the months of April, 2021 to June, 2021, however, thereafter, he stopped making payments for the said goods already received by him. To clear the remaining payments, the petitioner had issued two cheques bearing No.000095 dated 06.10.2022, and cheque No.005646 dated 05.05.2023 from the account of his firm maintained with Kotak Mahindra Bank Branch Sirhind and Federal Bank, Branch Mandi Gobindgarh, respectively. However, subsequently, the petitioner stopped the payment of one cheque; and even closed the account from which the second cheque was issued, with a totally malafide intention to complete the process of cheating the complainant. Instead of honouring the cheques issued by him, the petitioner even asserted that the said cheques were stolen and the petitioner had got a DDR registered in that regard in August, 2022. Even that aspect was got inquired into through the CIA Staff, however, after the inquiry, the

CRM-M-54971-2023

DDR was found to be false and it was also found that the said cheques were not stolen. It was also found that the said DDR was got lodged by the petitioner after four months of the alleged theft, despite the fact that his assertion was that the said cheques were stolen from his car. Still further, the petitioner had not even mentioned the cheque numbers which were, allegedly, stolen from his car. To generalize the things, the petitioner had only asserted that 15-20 cheques had been stolen. The petitioner had not even informed the bank regarding the said cheques having been stolen; by the time he had got lodged the said DDR. The entire sequence of facts; and the conduct of the petitioner; clearly shows that he had the intention to cheat the complainant, right from the beginning, and has succeeded in defrauding the complainant, besides misappropriating his goods.

5. Counsel for the State has further submitted that although during the investigation, it was found that there exists another account in the name of firm of the petitioner i.e. M/s Jassar Multi Metal, however, as to who opened that account and who is actually operating the same, is still under investigation. Hence, the assertion of the petitioner cannot be taken on its face value. Counsel for the State has also relied upon the judgment rendered by the Hon'ble Supreme Court in **Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and another 2012(2) RCR (Civil) 839.**

6. Counsel for the complainant has also submitted that the complainant was trapped by the petitioner by putting up his man, namely, Manish Vijan, to assure that the petitioner would be paying rate higher than the prevalent market rate. Had this representation not been made to the

CRM-M-54971-2023

complainant, he would not have supplied the material to the petitioner, rather, there were many customers in the open market for the goods of the complainant. The assertions made by the front-man of the petitioner, namely, Manish Vijan was not even disowned by the petitioner; because he had made the payment in the initial instance for the goods supplied to him. Hence, it is submitted that the complainant has been cheated, with a dishonest intention being there right from the day one, and by trapping him.

7. Before proceeding further, it deserves to be noticed that the present petition is filed seeking anticipatory bail in the matter. Anticipatory bail is not even a fundamental right. Getting pre-arrest bail is such a weak right that it is not available in some of the States in India qua any offence, and qua some offences, this is not available anywhere in India. Hence, pre-arrest bail is only an exception to the power of police to arrest; in case a cognizable offence is suspected to have been committed by a person. Therefore, while considering the application for anticipatory bail, the criteria has to be whether it is appropriate to stall the investigation to be conducted by the police in the right earnest, as considered appropriate by it. In such a situation, the Court has to consider the nature of allegations, gravity of the offence involved; requiring complex aspects of investigation, as well as, the fact that it is, broadly, in the interest of justice to have a proper investigation in a criminal case. This has also been held by the Hon'ble Supreme Court in several cases that the custodial interrogation is qualitatively different than the interrogation to which a person is put by the police under the protective umbrella of a Court order. Usually, the custodial interrogation has been found to be more effective and result

CRM-M-54971-2023

oriented in terms of collection of the evidence relevant to the facts involved in the matter. Hence, the Court has to be sanguine about the facts and circumstances of the case, and the requirements of an effective investigation; while considering a prayer for grant of pre-arrest bail.

8. So far as the present case is concerned, it is not even disputed by the petitioner that he has been supplied the goods by the complainant, worth Rs.2.08 crores. It is also not disputed that except an amount of Rs.30.50 lakh, the petitioner has deliberately not paid the said amount. Therefore, it is obvious that there is a whole lot amiss in the matter. Had the petitioner come up with some justifiable excuse for not making the payments to the complainant, may be, this would have given some rise to the argument that the matter involves a civil dispute and hence, criminal aspect should be avoided in the matter. However, in the present case, though the petitioner is alleging to have been himself cheated by a different set of persons, however, there is not even any assertion by the petitioner as to why he was not making the payments to the complainant, despite having received goods worth such a huge amount. Hence, the Court cannot countenance the argument raised by the counsel for the petitioner that the complainant is free to file a civil suit and that under-payment or non-payment of due money, is not an offence. Although the counsel for the petitioner has relied upon the case law *Veer Prakash Sharma's case (supra)*, *Hotline Teletubes and Components Ltd.'s case (supra)*, *Surinder Ahuja's case (supra)*, *Satender Kumar Antil's case (supra)* and *M/s S.K.Rai Engineers and Contractors Jaildar Market's case (supra)*, rendered by the Hon'ble Supreme Court and by this Court, however, the very

CRM-M-54971-2023

reading of the said judgments shows that it is only the under-payment or non-payment, **in itself**, which has been opined to be not constituting a criminal offence. But if there are circumstances surrounding the under-payment or non-payment, which take the case away from the aspect of being a case of only under-payment and non-payment, then such an argument is not available to an accused. Needless to say that in the Indian Penal Code, there is a separate Chapter regarding offences relating to property. Therefore, there is always a possibility of involving some aspect of civil dispute regarding such offences. However that, *per se*, would not absolve the accused of his criminal liability. In such cases, more important would be the facts and circumstances, which give indications qua the intention of such an accused. In the present case, as would be coming in the following paragraphs, there appear to be sufficient circumstances which take the case away from it being a mere civil dispute. Of course, one of such circumstances is the blatant argument raised by the counsel for the petitioner that although the petitioner has received the goods yet he is not making the payment, and that the complainant can file a civil suit for recovery. Such an argument, without there being any other ground justifying non-payment, in itself, reflects upon the dishonest intention of the person; because such an aware person fully knows that the civil litigation is going to take such a long time, which would grant him a long rope to avoid making any payments, despite having received goods for the value of the same.

9. The argument of the counsel for the petitioner that it is only a civil dispute and that offence under Sections 420 and 406 IPC are not

CRM-M-54971-2023

involved in the case, is discounted from the very fact that after having received some of the goods, the petitioner made the payments of small amounts, which could have allured the complainant to continue supplying the goods for huge values. Secondly, after issuing the cheques, the petitioner stopped the payment of the cheque in one case and closed the account altogether; qua the another cheque; to ensure that none of the cheques was cleared by the banker. The said entire gamut of the facts shows that the petitioner, right from the beginning, had inkling of not making the payments honestly. Moreover, it is the allegation of the complainant that he was allured by the agent of the petitioner, namely, Manish Vijan by misrepresenting that they will make the payment to the complainant at the rate higher than the market rate. It is not even disputed by the petitioner that the said Manish Vijan was working as his representative at the time when the goods were got supplied from the complainant. This kind of clever misrepresentation cannot come as a part of an ordinary civil business dealing. This also reflects upon the intention of the petitioner, right from the beginning, to have been not to comply with the terms of the contract of getting the goods and making the payment for the same. Moreover, the ingredients of Section 406, as defined under IPC, do not require any intention from the beginning. This section makes intentional misappropriation of goods in violation of the contract as well, a criminal offence. In the present case, the circumstances do suggest that the petitioner has intentionally misappropriated the goods and is trying to put up various excuses for not making the payments for the goods received.

The excuses being created by the petitioner just to avoid making the

CRM-M-54971-2023

payments of goods to the complainant range from issuing of cheques and closing of the account, getting DDR lodged regarding the alleged theft of the cheques after about six months of the alleged theft, as well as, coming up with another story that even the petitioner had been cheated by Manish Vijan and his associates, namely, Pankaj and Balbir Singh by withdrawing his money.

10. Although the petitioner has come up with another story that he has been cheated by Manish Vijan, Pankaj and Balbir Singh, by opening account in the name of his firm, and getting the payments deposited in that account and then by withdrawing the same, however, this has no relevance with the claim of the complainant qua the goods supplied by him. If the petitioner claims to have been cheated by Manish Vijan and his alleged accomplices, then the petitioner may have some remedy against them under the relevant law, however, that hardly can be put up as an excuse by the petitioner, for not making the payments to the complainant. Hence, this argument of counsel for the petitioner is also not relevant to the matter at all.

11. Another argument raised by the counsel for the petitioner is that since the offences are punishable with imprisonment upto 07 years, therefore, the police are required to comply with Sections 41 and 41-A of Cr.P.C. However, for the purpose of consideration of pre-arrest bail, this argument is not even a relevant, at all. This Court cannot presume, at this stage, that if at all, the police intend to arrest the petitioner, then they would not comply with the above-said provisions of the law. The said aspect is not; and cannot be; a subject matter of consideration in a petition

CRM-M-54971-2023

relating to grant of anticipatory bail. It is obvious that in case, the police so consider it appropriate to arrest the petitioner, they are under duty to comply with all the provisions as contained in Cr.P.C., for effecting arrest of the petitioner. Hence, even this argument of counsel for the petitioner has to be noted only, to be rejected. Although counsel for the petitioner has also argued, though half-heartedly, that since the complaint under Section 138 N.I.Act had also been filed, therefore, the FIR could not have been registered in the matter at the instance of the same complainant, however, even this argument of the counsel for the petitioner is without any substance. The Hon'ble Supreme Court in ***Sangeetaben Mahendrabhai Patel's case (supra)***, while relying upon several Constitutional Bench judgments of the Supreme Court only, has held that the argument of double jeopardy cannot be invoked on similarity of facts involved in two cases. The criteria for plea of double jeopardy to be raised is not the identity of facts, rather, it is the identity of ingredients of the offences involved in two cases. The principle of *autrefois* convict/*autrefois* acquit is not invited in a matter, unless a person is tried and acquitted or convicted of an offence and the ingredients of the offence for which the person has already been tried and convicted or acquitted, are such which would have led to the conviction or acquittal in the subsequent offence as well. Viewed from this angle, there is no commonality between the ingredients of offence under Section 420 IPC and 406 IPC on the one hand, and Section 138 N.I.Act on the other hand. Hence, even this argument has to be rejected.

12. Moreover, this Court finds substance in the argument raised by

CRM-M-54971-2023

the counsel for the State that since the investigation is at the initial stage and the police are to dig out the complex facts involved in the matter, including recovery of certain documents relating to receipt of goods by the petitioner and recovery of money, therefore; it may not be appropriate to thwart the interrogation, which the police may consider it appropriate in its own wisdom. Hence, in the considered opinion of this Court, it would not be appropriate to grant concession of anticipatory bail to the petitioner.

13. In view of the above, the present petition is dismissed.

23.11.2023
parveen kumar

(RAJBIR SEHRAWAT)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No