

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

CRM-M-58244-2022 (O&M)
Date of Decision: 09.02.2023

PUSHWINDER KUMAR @ PUSHPINDER KUMAR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Jasleen Kaur, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Deepak Goyal, Advocate
for the complainant.

HARSH BUNGER, J.

CRM-5628-2023

This is an application for placing on record Bills as Annexures
C-1 to C-8.

Criminal Misc. Application is allowed, as prayed for and
Annexures C-1 to C-8 are taken on record, subject to all just exceptions.

CRM-M-58244-2022

Petitioner has filed this petition under Section 438 of the Code
of Criminal Procedure before this Court seeking anticipatory bail in case
FIR No.110 dated 03.10.2022, registered under Sections 406, 408, 420,
465, 467, 468, 471 of the Indian Penal Code, 1860 and Sections 65 and

66(C) of the Information Technology Act, 2000 at Police Station Mataur, District S.A.S. Nagar.

The above-said case FIR has been registered on the complaint made by one Anil Kumar Aggarwal, representative of the company, which was being run under the name and style of 'M/s Cobb Apparels Private Limited', stating therein that one Pushpinder Kumar was an employee of the said company and has been working as a Store Manager at store situated at SCF No.87, Phase 7, Sector 61, S.A.S. Nagar. It is submitted that the software used by the company for issuing invoices and maintaining record started slowing down and main server of the company started hanging; therefore, the complaint was made to the software maintaining company namely WizApp of Softinfo System Pvt. Ltd. IT2-1904, Jaypee Greens Wish Town, Sector 128, Noida. U.P. Resultant thereto, an internal checking was conducted by the software company and during checking, it was found that the several invoices of current/previous years were updated and rebills were issued in huge quantity. Accordingly, the audit was conducted and during audit of last two financial years i.e. 2020-2021 and 2021-2022, the complainant found certain material inconsistencies and flaws in the bills so generated *viz a viz* actual sale. Upon checking, fabrication and manipulation of the bills was detected and it is alleged that Pushpinder Kumar (present petitioner) along with other employees of different stores of complainant company i.e. Lal Singh, Yadwinder Singh, Gurdial Singh, Hardeep Singh, Anil Kumar, Sandeep Singh, Bikmar Singh, Nawinder Singh, has hacked the master server of the company, whereupon the enquiry was conducted and said Pushpinder Kumar (who is alleged to be a mastermind behind all fraud) was found to have committed a fraud of Rs.49.52 lacs. On the basis

of said allegations, the FIR in question was registered against the present petitioner and eight other unknown persons.

Apprehending arrest in this case, the present petitioner approached the Court of Additional Sessions Judge, S.A.S. Nagar (Mohali), seeking anticipatory bail; however, the same was rejected vide order dated 02.12.2022 (Annexure P-2). Accordingly, the petitioner has filed the instant petition before this Court seeking anticipatory bail.

Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in the present case at the instance of complainant-Anil Kumar Aggarwal, authorized representative of M/s Cobb Apparels, where the petitioner is serving for the last seven years. Learned counsel further submitted that the duty of the petitioner in the said company is only to display the items and to deal with the customers and not to generate bills of his own choice; hence, the allegations of generating bills and manipulation thereof, are totally false and baseless. Learned counsel further submitted that the petitioner has no concern with the allegations levelled in the FIR and he is ready and willing to join investigation as and when required by the Investigating Agency and accordingly, prayer for grant of anticipatory bail has been made.

Per contra, learned State counsel has opposed the prayer for anticipatory bail to the petitioner on the ground that serious and grave allegations have been made in the FIR. He further submitted that though the petitioner committed a fraud with the company; accordingly, his custodial interrogation would be required to unearth the mode and manner in which the entire conspiracy to mis-appropriate the amount of the company was planned and who all are involved therein. Accordingly, prayer for dismissal of petition has been made.

I have heard learned counsel for the parties and have perused the paper book with their able assistance.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

In the instant case, there are citric allegations against the petitioner in the FIR itself. It is specifically alleged that the petitioner had compromised the master server of the company and fabricated the bills. Learned Additional Sessions Judge, S.A.S. Nagar (Mohali), while considering the anticipatory bail application of the petitioner, has observed as under :-

“6. Now in this case the applicant is manager of the store of the company in Phase VII Mohali and he was in control of all the activities. The huge discrepancies have been found in the billing and bills with heavy discounts and even 100% discount have been found to be given. The complainant company has been defrauded of huge amount and role of applicant is prima facie made out. The police needs to thoroughly investigate the matter to know about the modus operandi adopted by the accused for which custodial interrogation of the applicant is required. Therefore, the applicant in these circumstances is not entitled to benefit of anticipatory bail and his application is hereby dismissed. Police record be returned and this file be consigned to the record room.”

The custodial interrogation of the petitioner is found to be necessary for complete and effective investigation to find out how he in connivance with Lal Singh, Yadwinder Singh, Gurdial Singh, Hardeep Singh, Anil Kumar, Sandeep Singh, Vikram Singh and Navender Singh,

had compromised the master server of the company and fabricated the bills. In case, custodial interrogation of the petitioner is denied to the Investigating Agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

In *State represented by the C.B.I. versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble the Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful information.

Finding no merits in the petition, the same stands dismissed accordingly.

It may be mentioned here that nothing discussed here-in-above shall have any bearing on the merits of the case.

Pending application/s, if any, shall also stand closed.

February 09, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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