

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

221

CRM-M-61360-2023

Date of decision : 11.12.2023

Syed Pervez Rahman

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Bipan Ghai, Senior Advocate with
Mr.Nikhil Ghai, Advocate and
Mr.G.S. Gill, Advocate
for the petitioner.

Mr.Kunal Muthreja, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

1. This is a first petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.84 dated 23.06.2023 (Annexure P-1) registered under Sections 406, 420, 467, 468, 471, 120-B IPC at Police Station Sarabha Nagar, District Ludhiana.

2. Learned senior counsel for the petitioner has submitted that the petitioner has been in custody since 14.09.2023 and challan is yet to be filed and therefore, the presentation of challan as well as the conclusion of trial is likely to take time and that the petitioner was initially in police custody and is now in judicial custody and no useful purpose would be served by keeping the petitioner in further incarceration. It is submitted that the offences in the present case are triable by Magistrate. Learned senior counsel for the petitioner has submitted that even on merits there are several arguable points inasmuch as the petitioner has not been named in the FIR and as per the FIR, there is no allegation of any inducement qua the

petitioner levelled by the complainant or by Nirmal Singh Bhangu, who, allegedly as per the FIR have been duped of an amount of Rs.3.5 crores. It is further submitted that the allegations in the FIR with respect to inducement are qua co-accused Pritam Singh Kotbhai, Ex.MLA Kotbhai and he was granted interim anticipatory bail by the Additional Sessions Judge, Ludhiana, vide order dated 19.07.2023 (Annexure P-2) and vide order dated 23.08.2023 (Annexure P-3), the Additional Sessions Judge, Ludhiana confirmed the anticipatory bail of said Pritam Singh Kotbhai and in paragraph 4 of the said order, it has been recorded that even in case the version of the prosecution is taken into consideration, then also the conversation/ talks between Nirmal Singh Bhangu and Pritam Singh Kotbhai had taken place either in the year 2016 or in 2019 and there was a substantial delay in getting the statement of Nirmal Singh Bhangu, recorded under Section 161 Cr.P.C. Reliance was placed upon the judgment of the Hon'ble Supreme Court of India in ***Md.Ibrahim & others vs. State of Bihar and another*** in Criminal Appeal no.1695 of 2009 (arising out of SLP (Crl.) no.6211 of 2007 decided on 04.09.2009 and it was observed that the FIR had been registered on the statement of Shinder Singh whereas the person, who has been cheated, was Nirmal Singh Bhangu and after considering all the said facts, the concession of anticipatory bail was granted to co-accused Pritam Singh. It is the case of the petitioner that his case is on a much higher footing than that of said Pritam Singh Kotbhai and it is submitted that the name of the petitioner had surfaced for the first time in the supplementary statement of Shinder Singh (Annexure P-4), who, in the said supplementary statement had given a different version from the version given in the FIR after it was found that said Pritam Singh Kotbhai was never confined to Bathinda Jail. It is submitted that even as per the said

statement (Annexure P-4), there is no allegation that any amount was deposited in the account of the petitioner and the only allegation against the petitioner is that in the month of January 2020, Dileep Tripathi had met Pritam Singh Kotbhai through the petitioner and had showed his identity card of P.M. House to show that he is in contact with the senior officers. It is further submitted that the said version was not given in the complaint and was thus, an afterthought. Learned senior counsel for the petitioner has referred to the statement of Nirmal Singh Bhangu who, as per the case of the prosecution is the person, who had been cheated and it has been highlighted that the said Nirmal Singh Bhangu has not named the present petitioner in his statement. It is argued that the petitioner is sought to be implicated in the case primarily on the basis of statement of Dileep Kumar Tripathi dated 22.04.2022 (Annexure P-6) which has been recorded in the police custody and which is to the effect that an amount of Rs.1.31 crores was transferred by the said Dileep Kumar Tripathi, who is a contractor of one of the companies i.e. M/s Tirpathi Trading Company and the said company was named in the FIR. Learned senior counsel for the petitioner has submitted that there were business transactions between the said Dileep Kumar Tripathi and the present petitioner as both of them were dealing in electrical goods and has referred to the bank statement of the petitioner (Annexure P-8) to highlight the fact that several bank transactions have taken place between the two and the said transactions are not of any substantial amount. The transactions dated 05.08.2020 for Rs.1 lac, dated 21.08.2020 for Rs.9 lacs, dated 16.09.2020 for Rs.8 lacs, dated 13.10.2020 for Rs.15 lacs, and dated 03.11.2020 for Rs.5 lacs (on page 46 of the paper book) and dated 14.08.2020 for Rs.5 lacs (on page 59 of the paper book) have been highlighted. Learned senior counsel for the petitioner has also

referred to entries including the entry dated 10.11.2022 (page 84 of the paper book) showing that the petitioner had paid an amount of Rs.5 lacs to the said Dileep Kumar Tripathi and thus, prima facie shows that even the petitioner had paid amounts to Dileep Kumar Tripathi and the same were business transactions. Learned senior counsel for the petitioner has further highlighted that there are several disputes between Dileep Kumar Tripathi and the present petitioner and Dileep Kumar Tripathi had instituted a complaint under Section 138 of the Negotiable Instruments Act dated 15.10.2022 (Annexure P-9) and in paragraph 3 of the said complaint it has specifically been mentioned that the present petitioner had taken a loan for an amount of Rs.1.23 crores from him to expand his business and further allegations were made that the petitioner had issued cheques in favour of said Dileep Kumar Tripathi. Reference has also been made to the application dated 13.12.2022 (Annexure P-12) in which an application under Section 156(3) Cr.P.C. for registration of an FIR has been filed by the petitioner against the said Dileep Kumar Tripathi. It is submitted that vide order dated 23.08.2023 (Annexure P-7), the co-accused of the petitioner Dileep Kumar Tripathi, Jiwan Singh and Dharamvir, who are stated to be the Directors of the company which are specifically named in the present FIR and to whom the amount was transferred on the asking of Pritam Singh Kotbhai, have already been granted the concession of regular bail by the Additional Sessions Judge, Ludhiana. It is submitted that the case of the petitioner is on a better footing than the case of said three persons also. It is further submitted that no recovery has been effected from the petitioner and at any rate, since the entire material is already with the prosecution, thus, no purpose would be served by keeping the petitioner in further incarceration.

present petition and has submitted that in the present case, one Shinder Singh had filed a complaint against Pritam Singh Kotbhai (Ex.MLA), Owner of M/s Love Preet Contractor, Owner of M/s Daula Bricks Company, Owner of M/s Kisan Pesticides and Owner of M/s Tirupati Trading Company on the allegations that Nirmal Singh Bhangu, who was his uncle, was confined in Bathinda jail in the year 2016 and during the said period, he had come in contact with Pritam Singh Kotbhai, who was also confined in Jail and had allured Nirmal Singh Bhangu to get cases pending against him finished/closed and for the same, had told him that he would have to pay Rs.5 crores inasmuch as he would have to first pay Rs.3.50 crores and the balance of Rs.1.50 crore afterwards and after being induced, said Nirmal Singh Bhangu had deposited the said amount of Rs.3.50 crores in the accounts of various companies which have been named in the FIR through bank transactions. It is submitted that although the petitioner was not named in the FIR but from the supplementary statement of Shinder Singh (Annexure P-4) and from the statement of Dileep Kumar Tripathi dated 22.04.2022 (Annexure P-6) it came about that an amount of Rs.1.31 crores has been transferred by Dileep Kumar Tripathi to the account of the present petitioner and his wife. It is stated that from the said transaction, it is clear that the petitioner was in conspiracy with the said accused and thus, does not deserve the concession of regular bail. It is further stated that the petitioner is involved in one more case, however, the other facts have not been disputed.

4. Learned senior counsel for the petitioner in rebuttal has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen

while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in one other case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

5. This Court has heard learned counsel for the parties and has gone through the paper book.

6. It is not in dispute that the petitioner was not named in the FIR. As per the FIR, specific allegations have been made against co-accused Pritam Singh (Ex.MLA) Kotbhai of inducing Nirmal Singh Bhangu to pay an amount of Rs.5 crores in order to close / finish cases pending against him and it is further alleged that Rs.3.50 crores was paid in the account of four companies which have also been specifically named in the FIR. The said Pritam Singh Kotbhai was granted the concession of interim bail vide order dated 19.07.2023 (Annexure P-2) by the Additional Sessions Judge, Ludhiana which was confirmed vide order dated 23.08.2023 (Annexure P-3). While confirming the said anticipatory bail, it was observed by the Additional Sessions Judge in paragraph 4 of the order that although, the alleged conversation/ talks had started in the year 2016/2019, yet the statement of Nirmal Singh Bhangu was not recorded till the time interim bail was granted by the Additional Sessions Judge to Pritam Singh on 19.07.2023. Reliance was also placed upon the judgment of the Hon’ble Supreme Court in ***Md.Ibrahim’s*** (supra) and after considering all the aspects, the concession of anticipatory bail was granted. It is not in dispute

that the said order has not been challenged till date. It is further not in dispute that Dileep Kumar Tripathi, Jiwan Singh and Dharamvir, who are stated to be the Directors of the companies which have been named in the FIR, in whose accounts the amount was transferred, have been granted the concession of regular bail by the Additional Sessions Judge, Ludhiana vide order dated 23.08.2023 (Annexure P-7) and the said order has also not been challenged till date. The case of the petitioner is on a better footing than the case of Pritam Singh Kotbhai as well as that of Dileep Kumar Tripathi, Jiwan Singh and Dharamvir. With respect to the allegations that the money was transferred by Dileep Kumar Tripathi to the account of the petitioner and his wife, it is the case of the petitioner that there were business transactions between the petitioner and the said Dileep Kumar Tripathi and for the same, reference has been made to the bank statement of the petitioner (Annexure P-8) as they were both stated to be dealing in electrical goods. The filing of the complaint under Section 138 of the Negotiable Instrument Act by Dileep Kumar Tripathi against the petitioner and also the averments made therein as well as the application filed under Section 156(3) Cr.P.C. for registration of an FIR by the petitioner against Dileep Kumar Tripathi has also been highlighted on behalf of the petitioner to show that there were business dealings and disputes between the two parties. The said plea and other pleas raised on behalf of the petitioner would be considered during the course of trial and this Court does not wish to give any final opinion regarding the same as the same could cause prejudice to the case of either parties. The petitioner is in custody since 14.09.2023 and after being released from the police custody, is presently in judicial custody and the filing of the challan and conclusion of trial is likely to take time and thus, no purpose would be served by keeping the petitioner

in further incarceration.

7. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

8. However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

9. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

December 11, 2023.
Davinder Kumar

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