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212 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-60300-2023 (O&M)
Date of Decision: 06.12.2023

JAIRUL HAQUE

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Puja Chopra, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG Punjab.

Mr. N.S. Gill, Advocate with
Mr. Munish Gupta, Advocate for the complainant.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 153 dated 15.05.2023 registered under Sections 420, 406, 120-B of Indian Penal Code at Police Station Tripuri, Patiala District Patiala.

2. FIR was lodged on the basis of statement made by complainant-Aman Goyal on the allegations that the petitioner has cheated him to the tune of Rs. 9.75 lac. The complainant is running a company in the name of M/s. Goel Enterprises and doing business of electronics at Patiala. On 22.08.2022, Gaurav Kotoch approached the complainant and proclaimed himself to be Manager of the MC Haqson's Group Pvt. Ltd. Company, Golaghat Assam, which deals in the business of selling tea. On 26.08.2022, the complainant met the petitioner at Hotel Orbit, Chandigarh and placed an order amounting to Rs. 17.50 lac

for purchase of goods from the petitioner. An amount of Rs. 9.75 lacs

was transferred in the account of the company. After receiving the aforementioned amount, neither the goods which were ordered, have been delivered to the complainant, nor the amount has been returned.

3. Learned counsel for the petitioner inter alia contends that the petitioner has been falsely implicated in the present case being Director of the Company. In fact, it was a business transaction between the parties and the genesis of the dispute is outcome of an agreement dated 20.08.2022. The issue involved in this case is purely of civil nature and the company through its Authorized Officer has already filed a Civil Suit No. CS-713-2023 for permanent injunction in the competent Court of jurisdiction at Patiala against the complainant and the present FIR was lodged as a counter blast of the Civil Suit filed by the Company.

4. Per contra, learned counsel for the complainant opposes the grant of the regular bail to the petitioner on the ground that the petitioner is the Director of the Company and has embezzled an amount of Rs. 9.75 lac deposited in the bank account of the company. The culpable intention to cheat the complainant from the very inception is writ large on the facts and circumstance of the case.

5. Learned State counsel opposes the prayer for grant of bail to the petitioner on the ground that the present FIR was lodged after a detailed enquiry by a senior officer of the rank of Deputy Superintendent of Police and the investigation is still pending. In case the petitioner is granted regular bail, he may influence the witnesses.

6. Having heard the learned counsel for the parties and after perusing the record, it transpires that the offences under which the FIR is

lodged are punishable upto 07 years. The case is triable by Magistrate. The trial of the case is likely to take long time. Further detention of the petitioner would not be justified and petitioner is behind the bars since 15.10.2023. Culpability, if any, would be determined at the time of trial.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

6. In view of the above, petitioner-Jairul Haque is ordered to released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

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7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

8. The petition is allowed.

(HARPREET SINGH BRAR)
JUDGE

06.12.2023
Ajay Goswami

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