

CRM-M-60153-2023

215 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-60153-2023 (O&M)

Date of Decision: 20.12.2023

GULSHAN AHUJA AND ANOTHER

...Petitioners

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Varun Chhibba, Advocate with
Mr. P.S. Ahluwalia, Advocate
for the petitioners.

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

Mr. G.S. Attariwala, Sr. Advocate with
Mr. Vansh Chawla, Advocate
for the complainant.

HARPREET SINGH BRAR J. (Oral)

1. Through instant petition, the petitioners are seeking anticipatory bail in case FIR No. 128 dated 22.08.2023 registered under Sections 420, 406, 120-B of Indian Penal Code (Sections 465, 467, 468 and 471 of IPC added later on) at Police Station City-I, District Mansa.

2. On 30.11.2023, following order was passed:

“The present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C) for grant of anticipatory bail to the petitioner in FIR No.128 dated 22.08.2023 registered under Sections 420, 406, 120-B IPC (Sections 465, 467, 468 and 471 IPC added later on) at Police Station City-I, District Mansa. Learned counsel for the petitioners, inter alia, contends that petitioner No.1 is the Director of the accused-firm whereas petitioner No.2 has been implicated being son of petitioner No.1. Petitioner No.2 is neither the

Director nor Manager of the aforesaid accused-firm. There are business transactions between the accused-firm and the complainant-firm for the last five years and the accused-firm has already paid Rs.8.5 crores out of Rs.9 crores for purchase of goods as discernible from the ledger accounts (Annexure P-4). The remaining amount in dispute is approximately Rs.58 lakhs for which the complainant has already availed a civil remedy, which is pending adjudication before the Chairman, Micro & Small Enterprises Facilitation Council, Mansa. There is also dispute with regard to payment of GST to the department for which the petitioners have already filed writ petition, which is pending consideration of this Court.

Notice of motion.

On the asking of the Court, Ms. Navreet Kaur Barnala, AAG, Punjab, who is present in Court, accepts notice on behalf of the respondent State and opposes the prayer for grant of anticipatory bail to the petitioners.

At this stage, Mr. G.S. Attariwala, learned Senior Advocate assisted by Mr. JPS Sidhu and Mr. Vivek Aggarwal, Advocates has put in appearance and opposes grant of anticipatory bail to the petitioners on the ground that intention of the petitioners to cheat the complainant-firm is writ large from the very inception. In the petition filed before the learned Sessions Judge, Mansa, the petitioners have denied their liability qua the amount in question in para 5 of the petition. The petitioners have relied upon the compromise (Annexure P-14) and a perusal thereof clearly indicates that it has not been signed by the complainant nor by any witness rather it bears signatures of the petitioners only.

*In the meantime, keeping in view the law enunciated by the Hon'ble Supreme Court in **Satender Kumar Antil Vs. CBI (2022) 10 SCC 51; Siddharam***

Satlingappa Mhetre Vs. State of Maharashtra and others 2010 SCC OnLine SC 137; Gurbaksh Singh Sibbia etc. Vs. State of Punjab (1980) 2 SCC 565, Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 and Sushila Aggarwal Vs. State of NCT Delhi 2020 (1) RCR (Criminal) 833, at the first instance, the petitioners are directed to appear before the Investigating Officer on or before 08.12.2023 and on their doing so or in the event of arrest, the petitioners shall be admitted to interim bail on furnishing of bail/surety bond to the satisfaction of the Investigating/Arresting Officer. The petitioners shall cooperate with the Investigating Officer and abide by the conditions as provided under Section 438 (2) Cr.P.C.

If the Investigating/Arresting Officer does not permit the petitioners to join the investigation, the petitioners would appear before the Illaqa Magistrate, who would then summon the Arresting Officer and direct them to join the petitioners in investigation, in terms of the order of this Court.

Adjourned to 20.12.2023.

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.”

3. Learned State counsel on instructions from ASI Gurmail Singh, submits that in compliance of order dated 30.11.2023 passed by this Court, the petitioners have joined the investigation on 07.12.2023 and are not required for further custodial interrogation.

4. Learned Senior counsel appearing on behalf of the complainant has vehemently opposed the prayer for grant of anticipatory bail to the

petitioners on the ground that the petitioners have not come to this Court with clean hands and, therefore, does not deserve the concession of bail.

4. Keeping in view the statement made by learned State Counsel the order dated 30.11.2023, is made absolute. The petitioners shall abide by the terms and conditions enumerated in Section 438(2) of Cr.P.C.
5. The petition is accordingly allowed.

20.12.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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