IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215 **CRM M-6955 of 2021**
Date of Decision: 29.07.2024

Bobby Jain ...Petitioner

Versus

State of Haryana and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Mandeep Singla, Advocate, for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Sachin Mittal, Advocate and
Mr. Parth Sharma, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 439(2) Cr.P.C. with a prayer to set aside the impugned order dated 19.12.2020 (Annexure P-2) passed by the Court of D/JMFC, Gurugram, whereby, the concession of bail was granted to respondent No. 2.

2. Learned counsel for the petitioner contends that the FIR in the present case was registered on the basis of a complaint filed by the present petitioner and the copy of the same has been reproduced below:-

"Respected Sir, order dated 27.11.2019 passed by the Hon'ble Court of Shri Naveen Kumar-1, JMIC Gurugram (UID NO.HR-0461) Complainant Bobbu Jain Vs. Prashant Sethi CIS No.COMI-593-2019 u/s 156 (3) of Cr.P.C., received at Police Station for registration of case. The contents of application No.362.5P Police Post Ansal Township Police Station Palam Vihar are as under:- "The SHO, Palam Vihar Police Station Gurugram. Subject:- Complaint Prashant Sethi R/O E-2256, Palam Vihar, Gurugram for causing cheating upon me by inducing me to deliver jewellery worth Rs.3 Crores. Sir, I am engaged in the business of fashion jewellary/ornaments and having cordial relations with Prashant Sethi. He apprised me for his urgent needs for funds for his business but I showed inability to provide funds but he continuously persuaded and induced me to deliver his the jewellery which I had purchased for the marriage of my daughter and he also assured me that he will return the same. Sir, We both entered into a Memorandum of understanding on a Stamp Paper duly signed and witnessed accordingly as per law whereby Prashant induced me to deliver the Gold and Jewellery articles to him and he issued twelve cheques amounting Rs. 25,00,000/- cash total amounting to Rs 300,00,000/- (Three Crores only) duly filled and signed by him, copy of the said MOU is attached herewith as Annexure A. The said MOU was signed in the presence of his wife Mrs Prena Sethi R/O E-2256, Palam Vihar, Gurugram and my son Mr. Abhimanyu Jain. Sir, it is important to mention here that very recently it has come to my knowledge that Prashant Sethi is planning to get settled

permanently in America as he has already shifted his wife, his mother and his two sons there and he himself is also about to shift their at the earliest as he has cheated many others also for his wrongful gains. Sir, once if he will be out of India, me and people like me will suffer irreparable loss, which will not be able to compensate is any manner, therefore in such circumstances, I humbly request you to kindly register a case against him and seize his passport at the earliest to save the situation before he permanently flies out of India. I hope and pray for an earliest action against Prashant Sethi at your end in such emergent situation. Yours faithfully Sd/- Bobby Jain, K-1423, Palam vihar Gurugram, 9810002344 dated 25.11.19.)"

3. Learned senior counsel for the petitioner has vehemently submitted that the respondent No. 2 had been granted the concession of bail by the trial Court on the basis of misrepresentation of fact and the concession of bail granted to respondent No. 2 was liable to be withdrawn. He vehemently submits that in the present case, a settlement had taken place between the parties and the respondent No. 2 had violated the terms of the settlement. Even, respondent No. 2 was having dishonest intention of not returning either the jewelry or the money to the petitioner. Even, the petitioner had given jewelry amounting to Rs. 3 crores to respondent No. 2 on 24.05.2019 and the respondent No. 2 was still keeping jewelry with him. Even, respondent No. 2 had misappropriated the said jewelry and had sent

his family abroad. Learned senior counsel vehemently argues that in the present case, the offence of criminal breach of trust was not made out rather the ingredients of the offence under Section 420 IPC were clearly made out. Still further, two more FIRs i.e., FIR No. 245 dated 12.07.2017 under Section 380 IPC, Police Station Moti Nagar, West Delhi and FIR No. 246 dated 12.07.2017 under Section 380 IPC Police Station Moti Nagar, West Delhi were also registered against the respondent No. 2 and he was a habitual offender. Apart from that, respondent No. 2 was threatening the petitioner to withdraw the present case against him otherwise he would face the dire consequences.

4. On the other hand, learned State counsel has submitted that serious allegations had been levelled against respondent No. 2 and appropriate orders may be passed keeping in view the gravity of the offence. Further, learned counsel appearing on behalf of respondent No. 2 has opposed the submissions made by learned counsel for the petitioner and submitted that there was a civil dispute between the parties and it has been wrongly converted into criminal offence. He further contends that the present petitioner was also involved in numerous cases, where allegations of cheating, misrepresenting and mischievously extorting money of several persons had been levelled against him. He further contends that in May 2019, the petitioner had offered the answering respondent to take his diamonds and use them for business purposes. In lieu of the said

obligation, the petitioner had taken 12 undated cheques of Rs. 25 lacs each from respondent No. 2 as security till the time the diamond/gold jewelry was with the respondent No. 2. In the month of May 2019 itself, the respondent No. 2 required the some urgent cash for making payment to a third party and called a certified jeweler for pledging diamond/gold jewelry. However, the said jeweler told respondent No. 2 that the diamond were of junk material and did not cost more than Rs. 30,000/-. Even on this, the petitioner had refused to deliver the original diamonds or return the cheques and rather demanded a sum of Rs. 3 crores from the respondent No. 2. The respondent No. 2 had already lodged a complaint with Police Station Ashok Vihar, Delhi and the matter was being investigated by Economic Offences Wing of Delhi Police.

5. I have heard the rival submissions made by learned counsel for the parties and perused the record carefully.

6. In the present case, the dispute between the parties revolves around the terms of a memorandum of understanding dated 24.05.2019 executed between the petitioner and the respondent No. 2. Even, the said memorandum of understanding is not in dispute in the present case and the terms have been agreed between the parties. Still further, in the present case, the petitioner/complainant himself had entrusted the jewelry to the respondent No. 2/accused and ultimately the same was given by the petitioner as per the terms of the MOU for business relationship between the parties and for business use. As a

security, the respondent No.2/accused had also handed over 12 anti dated security cheques of Rs. 25 lacs each to the present petitioner. Even, the trial Court while granting the concession of bail to respondent No. 2 correctly observed that in the present case, the dispute between the parties was regarding the breach of the terms of the MOU, which was executed between the petitioner and respondent No. 2. Thus, whether such a breach of terms of the MOU would constitute the offence of criminal breach of trust or a civil dispute would be a matter of adjudication before the trial Court. Apart from that, in the present case, the passport of the respondent No. 2 has already been taken in possession by the Investigating Officer and the apprehension expressed by the learned counsel for the petitioner that the petitioner would flee from the country is without any basis. Apart from that, the trial Court, while granting the concession of bail to the respondent No. 2 has recorded the detailed reasons, which weighed with the trial Court while extending the concession of bail to respondent No. 2.

7. Even otherwise, the Hon’ble Supreme Court as well as this Court have held in number of matters that rejection of bail when the bail is applied for is one thing, whereas the cancellation of bail already granted is quite another. It is easier to reject a bail application in non-bailable case then to cancel the bail granted in such a case. The cancellation of bail certainly involves the review of a decision earlier made and can by and large be permitted only, if, by the reason of

supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. In fact, the order of cancellation of bail is a very harsh order and interferes with the personal liberty of an individual.

8. In the instant case also, there is no material on record to show that the respondent No. 2 had tried to influence the witnesses or tried to tamper with the records or there was a well founded apprehension that the respondent No. 2 would abscond from the process of the law. The trial Court had applied its mind by passing a detailed order and had rightly granted the bail and there is no ground to interfere with such an exercise of discretion.

9. Accordingly, the petition is dismissed.

29.07.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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