

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

212

CRM-M-7191-2024

Date of decision: 24.04.2024

MANOJ KUMAR AND OTHERS

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. P.S. Poonia, Advocate  
for the petitioners.

Mr. Abhinash Jain, DAG, Haryana.

Mr. S.D. Sharma, Advocate for  
Mr. Sushil Jain, Advocate  
for the respondent.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, under Section 438 Cr.P.C, prayer is made for grant of anticipatory bail to the petitioners in case FIR No.308 dated 20.12.2023, registered under Sections 406, 409 and 120-B of IPC, at Police Station Sector 6, Dharuhera, District Rewari.

2. Status report by way of affidavit dated 19.04.2024 of Sh. Pawan Kumar, HPS, Deputy Superintendent of Police, Rewari, District Rewari has been filed on behalf of respondent State. The same is taken on record.

3. On 12.02.2024, the following order was passed:-

"1. Through the instant petition, under Section 438 Cr.P.C, prayer is made for grant of anticipatory bail to the petitioners in case FIR No.308 dated 20.12.2023, registered under Sections 406, 409 and 120-B of IPC, at Police Station Sector 6, Dharuhera, District Rewari.

2. Learned counsel for the petitioners submits that the

*allegations which are levelled against the petitioners are that, they have access to the accounts of RWA, and the payments, which were made by the present petitioners, were only for the welfare of the society concerned. Learned counsel for the petitioners further draws attention of this Court to the order dated 29.01.2024 (Annexure P-12), whereby, the Director General of Industries & Commerce-cum-Registrar General of Societies, Haryana has ordered special audit, after considering the similar allegations. The relevant extract of the same reads as under:-*

*"In view of the above, I am of the considered view that the Ld. State Registrar of Societies, Haryana has passed the Impugned order dated 12.10.2023 without considering the above legal position and Additional Deputy Commissioner, Rewari also issued letter dated 10.07.2023 and passed the impugned order date 08.08.2023 by exceeding his jurisdiction. In these circumstances, I hereby set aside the order dated 12.10.2023 passed by the Ld. State Registrar of Societies, Haryana, letter dated 10.07.2023 and order dated 08.08.2023 passed by the Additional Deputy Commissioner, Rewari. The subsequent order dated 18.08.2023 which was passed by the District Registrar, Rewari in compliance of order dated 08.08.2023 is also set aside. The District Registrar, Rewari is hereby directed to ensure that the audit of the accounts of the society as ordered by him vide his order dated 02.05.2023 be completed within a period of one month. Needless to mentioned here that any legal action, if required, on the basis of audit so conducted, may also be taken as per the provisions of the HRRS Act, 2012. The present appeal is hereby allowed in above terms. The pending applications, if any, stands disposed of."*

3. *Learned counsel for the petitioners further submits that petitioner No.1, claims himself to be President of Park View Delight Apartment Resident Welfare Association, and petitioners No.2 and 3, are the earlier erstwhile office bearers of the above society. Learned counsel for the petitioners further submits that the petitioners having apprehension to be arrested in the FIR (supra), and has approached this Court on the ground that, in fact they were making payments to the employees of the*

*society concerned, from their own accounts, including the EPFO, because of the reason that, the society does not have the facility of online transaction.*

4. *Learned counsel for the petitioners also submits that owing not to deposit the monthly maintenance fee by the members of the society, the petitioners on some occasions used to transfer the amount through their own accounts as well.*

5. *Learned counsel for the petitioners while mentioning the above mentioned facts states that, since the special audit is pending, and the petitioners are already cooperating with the special auditor, therefore, the custodial interrogation of the petitioners are not required. Learned counsel for the petitioners further submits that the entire case is based upon documentary evidence, and he ensures this Court that the petitioners will hand over the entire record forthwith (within three days from today), to the Investigating Officer concerned.*

6. *Notice of motion.*

7. *Mr. Bhupender Singh, DAG, Haryana, waives service of notice on behalf of the respondent-State. At this stage, Mr. Narender Kumar Sharma, Advocate, appears on behalf of the complainant, and files his Memorandum of Appearance, which is taken on record. He assures this Court that he will submit his duly executed Power of Attorney on behalf of the complainant within 15 days from today, with the Registry of this Court.*

8. *Learned counsel for the complainant has vociferously opposed the asked for relief to the petitioner, on the ground that it is an open and shut case of embezzlement, where, from the perusal of the account statement of the society, it is clear that huge amount was transferred by the petitioner(s) concerned, from the account of RWA, to his own account, and subsequently misused that said transferred amount.*

9. *Learned counsel for the complainant further submits that petitioner No.1, was even removed from the post of President of RWA, despite that petitioner No.1, still claims himself to be the President of the Society concerned.*

10. *Learned counsel for the complainant also submits that the resolution of removing petitioner No.1, from the office of Presidentship of the society concerned was also challenged, and the status quo was granted regarding the same, and thereupon, the complainant party also challenged the status quo order, whereby, specific*

*directions were given to the petitioner concerned, through the order (Annexure P-11), but despite that they did not hand over the entire record to the new office bearers of the society.*

11. *Learned counsel for the complainant further states that the conduct of the petitioners, does not allow them to be granted the relief of pre-arrest bail, as they even try to assault the complainant side, which resulted into lodging of another FIR.*

12. *Be that as it may, this Court is of the opinion that since the matter is with regard to the audit of accounts of the society concerned, it is still under consideration, therefore, the allegations of embezzlement, if any, is yet to be established. Further the present issue requires investigation through documentary evidence only, therefore, the custodial interrogation of the petitioners are not required.*

13. *Adjourned to 11.03.2024.*

14. *In the meantime, the petitioners are directed to join the investigation and to appear before the investigating agency as and when called upon to do so. In the event of their arrest, they shall be admitted to interim bail on their furnishing bail bond to the satisfaction of the Arresting/Investigating Officer. The petitioners shall also abide by the terms and conditions as envisaged under Section 438(2) Cr.P.C.*

15. *Further the petitioners, at the time of joining the investigation, shall hand over the entire record pertaining to the society to the Investigating Officer. However, in case the petitioners fail to submit the entire record to the Investigating Officer, it shall be construed by this Court that the petitioners are deliberately evading the scrutiny of accounts of the society."*

4. Thereupon on 11.03.2024, the petitioners were specifically directed to forthwith hand over the entire record(s) of the society to the Investigating Officer, and whereupon, the Investigating Officer in compliance to the order dated 01.03.2024, passed by the Co-ordinate Bench in CWP-4930-2024, shall hand over the same to the Local Commissioner.

5. Learned State counsel on instructions, imparted to him by ASI Ravi Kant, submits that the total amount of Rs.1,63,13,516.72, was transferred in the

personal account of the petitioners, from the account of the society, and during investigation, it was found that Rs.1,47,77,714 was re-deposited in the account of the society by the petitioners. Learned State counsel further submits that the investigation is being carried out, and the documents which have been submitted by the petitioners during the course of investigation, will be within 07 days from today, be handed over to the Local Commissioner, appointed by this Court, after making the relevant inventory.

6. Since the petitioners have joined the investigation, and have submitted all requisite documents, and the issue of embezzlement is yet to be established, this Court deems it fit and appropriate to confirm the order dated 12.02.2024, subject to the condition that the petitioners shall keep on joining the investigation, as and when called upon by the Investigating Officer concerned.

7. Further a liberty is granted to the learned State counsel to seek cancellation of the bail, in case the petitioners fails to join the investigation.

8. The instant petition is **disposed** of accordingly.

24.04.2024  
amandeep

(KULDEEP TIWARI)  
JUDGE

Whether speaking/reasoned. : Yes/No  
Whether Reportable. : Yes/No