2024:PHHC:119701

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

207 (03 cases)

1. CRM-M-22098-2022 (O&M)

Kamlakar Pathak ...Petitioner

Versus

State of Haryana and others ...Respondents

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2. CRM-M-48343-2022 (O&M)

Indu Pathak ...Petitioner

Versus

State of Haryana ...Respondent

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3. CRM-M-39862-2022 (O&M)

Pankaj Pansari ...Petitioner

Versus

State of Haryana and others ...Respondents

Date of decision: 11.09.2024

CORAM:- HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. S. K. Garg Narwana, Senior Advocate with
Mr. Mukesh Rao, Advocate
for the petitioners in CRM-M-22098 &48343-2022.

Mr. Abhishek Vig, Advocate
for the petitioner in CRM-M-39862-2022.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. J. S. Yadav, Advocate and
Mr. Mahipal Singh Yadav, Advocate
for respondent No. 2/complainant.

Mr. Amandeep Singh Talwar, Advocate
for respondent No. 3/HDFC Bank

2024:PHHC:119701

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<u>MANISHA BATRA, J.</u> *<u>(Oral)</u>*

1. This common order shall dispose of above noted three petitions as these petitions arise out of the same FIR and seek similar relief.

2. These petitions have been filed under Section 438 of the Code of Criminal Procedure *(for short 'Cr.P.C.')* seeking grant of anticipatory bail to above named petitioners in case arising out of FIR No. 260 dated 29.09.2021, registered under Sections 420, 467, 468, 471 and 120-B of the IPC at Police Station Manesar, District Gurugram.

3. The material facts in brief, relevant for the purpose of disposal of these petitions are that the aforementioned FIR was lodged on the basis of a written complaint filed by respondent No. 2/complainant Savitri Yadav alleging therein that petitioner Kamlakar Pathak was one of the directors of Mackerol Oil Tools Pvt. Ltd. From quite some time, he had been persuading the complainant to invest in his company and to be on the Board of Directors thereof. On his repeated requests, the complainant, in the month of October, 2019, had agreed to make investment in the above named company and to be the shareholder to the extent of 25%. After her joining as an Additional director, the company through petitioner Kamlakar Pathak had applied for loan from HDFC Bank. On being induced by the petitioner, the complainant in good faith gave personal guarantee to HDFC Bank for Packing Credit Facilities *(for short 'PCFC')* only and not for any other purpose. This guarantee was only for a period of one year. By way of this guarantee, she deposited title deeds of her property bearing Apartment No. A-703, Hextex, Sector 43, Gurugram. She alleged that on 20.02.2020, petitioner Kamlakar

Pathak, without having any authorization/consent or power of attorney from her, moved an application with the HDFC Bank to change the nature of her guarantee from PCFC limit to General Cash Credit Limit *(for short 'GCCL')*. On the basis of the said application, HDFC Bank changed the PCFC limit, which was 100% secured and was against confirmed order and valid for one year only to GCCL (100% insecured cash credit locked in for seven years) in March, 2020. This facility was an open blanket permit to draw as much money as the borrower wanted, without any question. A Board resolution was submitted by petitioner Kamlakar Pathak and his wife petitioner Indu Pathak for change of credit facility, whereby the company as borrower had agreed to give company owned immoveable properties as collateral. The complainant further alleged that neither co-accused Sundaram, who was the Accounts Manager of the company, nor petitioners or the other co-accused namely Ravi Kumar, Nirmal Mishra had informed her about the change of aforesaid facility, though they were under obligation to do so. On 31.03.2020, an agreement was executed between HDFC Bank and petitioner Kamlakar Pathak, thereby changing the PCFC limit to GCCL, despite the fact that none of them had any authorization or power of attorney to do so.

4. As per the further allegations, the complainant and her husband were not in India at the time when the pandemic of Covid-19 had outbroken and they could return to India only on 27.11.2020 and it was only in December, 2020 that they came to know that the petitioners in connivance with co-accused had changed the PCFC to GCCL, without the consent/knowledge or notice of the complainant. It was alleged that

petitioners Kamlakar Pathak and Indu Pathak in connivance with petitioner Pankaj Pansari and other co-accused and officials of the HDFC Bank had got the PCFC limit converted to GCCL, which had the consequence of the guarantee, being given by the complainant of her immoveable property for one year, stood extended to seven years, thereby extending the period of mortgage also and that the signatures of the complainant were also forged on the guarantee letter dated 07.03.2020, without her permission or knowledge and with an intent to defraud and cheat her. The complainant had approached the bank authorities for return of the original documents of her property but in vain. As such, she prayed for taking action in the matter. After registration of the FIR, investigation proceedings were initiated. Apprehending their arrest, the petitioners had filed their respective applications seeking anticipatory bail before the Court of learned Additional Sessions Judge, Gurugram but the same had been dismissed.

5. On 20.05.2022, while issuing notice of motion in ***CRM-M-22098-2022*** and grating concession of interim bail to petitioner Kamlakar Pathak, the following order was passed by this Court:

> "Mr. S.K. Narwana, learned Senior counsel for the petitioner has submitted that in the present case the present FIR has been lodged against the petitioner which amounts to an abuse of the process of law. He further submitted that the petitioner was a Director of the company to the extent of 25% share and the allegations in the FIR are that the complainant was a guarantor in the HDFC Bank against her property for a period of one year which was PCFC limit and after some days as per the complainant the nature of the guarantee was changed from PCFC to DOD which was extendable to 7 years

and the difference between nature of these two guarantees was that the initial guarantee was for the purpose of getting orders from the foreign countries in foreign currency and the changed nature of the guarantee was for the purpose of business of the company in India. Learned Senior Counsel further submitted that in fact there was no occasion for the petitioner who also is a Director of the company who has allegedly forged the signature of the complainant because the guarantee was meant for the company itself of which the complainant herself was the Director. He further submitted that so far as the initial guarantee of PCFC is concerned, the same is not in dispute. He further submitted that in fact the lodging of the FIR was a outcome of the dispute which arose between the Directors and in order to pressurise the petitioner, the present FIR was got lodged. Learned Senior Counsel further submitted that rather the complainant had filed a civil suit for declaration dated 03.08.2021 (Annexure P-22) with regard to the same subject matter and issues have already been framed in that suit and issue No.2 is that whether the subsequent continuation of the guarantee is invalid in law for want of express consent of the plaintiff or not and issue No.3 is that whether the signature of the plaintiff on the letter of continuing guarantee was forged or not. Learned Senior Counsel further submitted that after the filing of the present suit, the present FIR was lodged. He further submitted while referring to Annexure P-14 that after 9 months of the aforesaid renewal in the month of March rather the complainant had executed an agreement with the petitioner and the company pertaining to her legal rights including remuneration and this agreement is dated

15.12.2020. He further submitted that in view of the aforesaid submissions the present FIR was an abuse of the process of law.

Notice of motion.

Mr. Ranvir Singh Arya, learned Additional Advocate General, Haryana accepts notice on behalf of the State of Haryana and has prayed for some time to file an affidavit. He submitted that the signatures of the complainant were compared from FSL Laboratory and it was found that they had been forged.

At this stage, Mr. S.K. Narwana, learned Senior Counsel for the petitioner has also made a oral request that in view of the facts and circumstances the complainant namely Savitri Yadav may be also impleaded as respondent No.2.

The learned State counsel has not opposed the request of the learned Senior Counsel for the petitioner.

The request of the learned Senior Counsel for the petitioner is accepted. The complainant namely, Savitri Yadav wife of Sh. Karan Singh Yadav, resident of Apartment No.11-B, Tower 11 (B), Central Park 2 Resorts, Sector-48, Gurugaon is hereby impleaded as respondent No.2.

The Registry is directed to carry out the necessary correction in the memo of parties.

Let notice be issued to respondent No.2 on filing of process fee.

Adjourned to 18.07.2022.

In the meantime, petitioner is directed to join the investigation as and when called by the Investigating Officer. In the event of his arrest, he shall be released on bail by the Arresting/Investigating Officer on his furnishing bail bonds/sureties to his satisfaction, subject

> to the conditions as provided under Section 438(2) Cr.P.C."

Similarly, petitioners Indu Bala and Pankaj Pansari have also been granted concession of interim bail, vide orders dated 18.10.2022 and 02.09.2022, passed in their respective petition.

6. It will not be out of place to mention here that HDFC Bank was also impleaded as respondent No. 3, vide order dated 09.09.2022 and on the same date, direction was given to petitioner Kamlakar Pathak to join the investigation again as it was submitted by learned State counsel that he had not cooperated with the investigation process, though he had joined the same.

7. On 30.05.2023, on the request of learned counsel for the parties to the effect that there was possibility of an amicable settlement in the case, the matter was referred to the Mediation and Conciliation Centre of this Court. However, as report dated 05.09.2024 had been received from the Mediator that the matter could not be settled between the parties.

8. It is argued by learned senior counsel, appearing for petitioners Kamlakar Pathak and Indu Pathak, that they have been falsely implicated by the complainant with an intention to capture the aforesaid company. She was fully aware of the conversion of PCFC limit to GCCL. Vide email dated 23.04.2021, the Bank had duly intimated the complainant about the change of PCFC limit to GCCL on the request received from the Director of the company and also that the limit was interchanged without any enhancement and that the guarantee regarding property mortgaged by her at the time of sanctioning of PCFC limit was still valid and continuing. The document in question was signed by the complainant in the presence of the Relationship

Manager of the Bank at the time of said conversion and her signatures were not forged. The dispute regarding forging signatures on the sanctioning letter was subject to civil litigation going on between the parties and pending before the Civil Court. In fact, the FIR of this case has been lodged by the complainant only to avoid her liability towards the bank and to save her property, which was lying mortgaged with it, from attachment. Petitioner Kamlakar Pathak has been granted concession of interim bail and has already joined the investigation. His custodial interrogation is not required at all. No useful purpose would be served by detaining him into custody as no recovery is to be effected from him.

9. With regard to petitioner Indu Pathak, learned senior counsel has argued that she was a non-working Director of the company, who was neither having any knowledge of internal affairs of the company nor was participating in day to day affairs thereof. She has been implicated in this case only because of being wife of petitioner Kamlakar Pathak. The complainant wanted to capture the company and to have the absolute control over the same by becoming the Managing Director thereof. The ingredients for commission of offence of cheating, forgery or use of forged documents have not been established against her at all nor there is any material on record to show that she had connived with the co-accused. In fact, it was the complainant, who was keen to invest money in the company and had herself offered her property as security for the purpose of seeking loan from the bank for increased amount. Petitioner Indu Pathak had no role to play in the commission of subject offences. She is not even made party in the civil suit filed by the complainant. She was not the beneficiary of any fraudulent

transaction allegedly made by the co-accused. She has been granted concession of interim bail and has joined the investigation. No useful purpose would be served by detaining her into custody as no recovery is to be effected even from her.

10. Learned counsel, appearing for petitioner Pankaj Pansari, has argued that he was the Relationship Manager of the aforesaid bank at the time when the documents in question were submitted. However, he had no role to play in the alleged fraud committed by the co-accused. The PCFC limit of the company was changed to GCCL for seven years on receiving a resolution letter of continuity in the bank, which was duly signed by the complainant. Communication about this fact had been sent to the complainant. The petitioner had no occasion to know that any of those documents were containing forged signatures. He had acted as per the guidelines. His custodial interrogation is not required. Neither any recovery is to be effected from him. He too has already joined investigation. He was not the beneficiary of the alleged fraud.

11. With the aforesaid broad submissions, learned counsel appearing for all the three petitioners have urged that the orders grating interim bail to the petitioners deserve to be made absolute and the petitions deserve to be allowed.

12. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

13. The allegations against petitioners Kamlakar Pathak and Indu Pathak are that they, being directors of the aforesaid company, had inducted the complainant as an Additional Director to the extent of 25% share in the

2024:PHHC:119701

company and then had induced her to deposit the documents of title deeds of her immoveable property by way of guarantee in lieu of PCFC limit for a period of one year. However, subsequently, in the absence of the complainant and without her knowledge or consent or permission, petitioner Kamlakar Pathak in connivance with petitioner Indu Pathak and other co-accused, had moved an application for change of PCFC limit to GCCL against security of the same property, which was mortgaged by the complainant for a period of one year into the security for a period of seven years. As per the further allegations, even the officials of the HDFC Bank concerned, while changing PCFC limit to GCCL by treating the documents submitted by the complainant as security for a period of one year to security for a period of seven years, neither informed the complainant nor took her consent and all this was done in connivance with petitioners Kamlakar Pathak and Indu Pathak. As per instructions of learned State counsel, all the petitioners have since joined investigation. The case is based upon documentary evidence. The allegations that the signatures as purported to be appended by the complainant on the guarantee letter dated 07.03.2020 were in fact forged signatures and the same were forged by petitioner Kamlakar Pathak in connivance with co-accused have to be taken into consideration at the time of conclusion of trial on the basis of the evidence produced on record during trial. No recovery is to be effected from the petitioners. In these facts and circumstances, I am of the considered opinion that no useful purpose would be served by detaining them into custody.

14. Accordingly, the present petitions are allowed and the orders dated 20.05.2020, 18.10.2022 and 02.09.2022, granting concession of

interim bail to petitioners Kamlakar Pathak, Indu Pathak and Pankaj Pansari, respectively are made absolute, subject to the conditions envisaged under Section 438(2) of Cr.P.C.

15. It is made clear that any observation made herein above is only for the purpose of deciding the present petitions and the same shall have no bearing on the merits of the case.

16. Let a photocopy of this order be placed on the file of the connected cases.

11.09.2024 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*