

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRM-M-22224-2022(O&M)
Date of decision: 02.04.2024

Neeraj
...Petitioner
Versus
State of Haryana
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Akshay Jindal, Advocate for the petitioner.
Mr. Kiran Pal Singh, AAG, Haryana.
Mr. Rakesh Nehra, Senior Advocate with
Mr. Sauhard Singh, Advocate for the complainant.

MAHABIR SINGH SINDHU, J.

Present petition under Section 438 of the Code of Criminal Procedure (for short ‘Cr.P.C.’) has been filed for grant of pre-arrest bail to the petitioner in FIR No.156 dated 30.04.2022, under Sections 120-B, 406, 420 read with Section 34 of the Indian Penal Code, 1860, registered at Police Station, Urban Estate, Rohtak.

(2) Above FIR was registered by the *de facto* complainant/informant-Rajeshwer and the allegations read as under:-

“Sir, I am residing in H.No.2040, Sector-2, 3 (Part), Rohtak as a tenant since May, 2018. I am residing with my family at ground floor whereas, the landlord is residing with his family on 1st floor. Sh. Satish Kumar Kajal is the owner of this house. He was caught Red handed in Bribe case long back and convicted in that case. Sh. Kashish Kumar Kajal, S/o Sh. Satish Kumar Kajal runs a Honda Scooty agency/showroom at Kalanaur. But his business is not going well as he frequently told. Smt. Neeraj W/o Sh. Kashish Kumar Kajal is working as Manager in PNB at Rohtak. She is facing CBI inquiry for committing some fraud in the bank. The landlords especially Smt. Neeraj and Kashish do frequent visits to my portion of the house to take one article or another. During last week of March, 2022, Smt. Neeraj enquired from me about the Steel peti/Trunk wherein I replied that some cash is kept inside the Trunk. She told that such type of Trunks are also available in her bank which are being used to store and for transportation of cash. She further said that during day time since you are away to your office and your wife also frequently visits her parental home to look after her old aged parents so the Peti / Trunk is not safe at ground floor. She suggested that she is professional in handling such types of cash boxes, hence put the Trunk upstairs where it will remains safe.

During last week of March, 2022, Sh. Kashish along with his wife, Neeraj came to my bedroom and asked to handover the Peti / Trunk, Smt. Neeraj counted the currency and found Rs. 45 lac cash (90 packets of Rs. 500 note each). At the time of counting of cash, Sh. Satish Kajal was also present. Thereafter, both of them (father and son) picked up the Trunk duly locked with 2 No. Locks containing Rs. 45 lac cash and taken to Ist floor. After a week time, I requested to Sh. Satish Kajal to show me the place where the Peti/box is placed. He tried to avoid and ignored me on one pretext or another. Thereupon, I smelled something suspicious. On 16.09.2022 I asked Sh. Kashish to return my Peti/Trunk back. He again tried to misguide and did not return the Steel Peti/Trunk. Further, on 17/ 18.4.2022, I reminded him but he kept on taking excuse every time. On 19.4.22 at 7.16 AM, I rang and requested him to return me the Peti/Trunk. Thereafter, at 07.27 AM (19.4.2022), I again rang and strongly directed to return the same. Thereupon he came with the Steel Peti / Trunk to my drawing room, put it down and went away. I was shocked to see that both the Kundas of Peti / Trunk have been broken. I opened the locks with the help of keys and stunned to see that the box was Empty. I immediately called Kashish back within seconds and showed him the broken kundas of Trunk and empty cartons. I doubt that Sh. Satish Kumar Kajal and Smt. Neeraj are involved in this theft. My family is residing in this house since last 4 years. We treat Kashish as our own son like and his family like united. So before taking any legal action against them I have tried since 19.4.2022 to sort out the issue amicably. But sometimes his family assure to return the money back and sometimes otherwise. Now Sh. Kashish and his father Sh. Satish Kajal have started intimidating me by calling some Gunda - like persons and threatened me to keep mum lest they will teach me a lesson. Hence, now I have no other option left but to take legal action against them. Sh. Satish Kajal, Kashish and his wife Smt. Neeraj seems to be professional criminals and are not ready to return my cash back. It is, therefore requested to lodge FIR against Kashish Kajal, Sh. Satish Kumar Kajal and Smt. Neeraj for hatching criminal conspiracy, stealing Rs. 45 lac and threatening me under appropriate sections of law.”

(3) Learned counsel for the petitioner contends that on 23.05.2022, the then Coordinate Bench after hearing the parties at length granted interim bail to the petitioner and in terms thereof, she has already joined investigation. Also contends that petitioner is still ready to cooperate with Investigating Officer as and when called for; hence, her custodial interrogation would not serve any purpose.

(4) *Per contra*, learned State counsel although acknowledged the factum of joining investigation by the petitioner, but opposed the prayer on the ground that recovery of alleged cash amount of Rs.45 lakhs is yet to be effected.

(5) Similarly, learned counsel for the complainant also vehemently opposed the prayer on the premise that alleged cash amount is yet to be recovered from the petitioner.

- (6) Heard learned counsel for the parties and perused the paper-book.
- (7) It transpires that petitioner was granted interim bail by the then Coordinate Bench on 23.05.2022 and the order reads as under:-

“All the three petitions, mentioned above, have arisen out of the same FIR, hence, being taken up together for hearing.

In all three petitions, prayer is for grant of anticipatory bail in case FIR No.156 dated 30.04.2022 under Sections 120-B,34,406,420 IPC registered at P.S Urban Estate, Rohtak.

FIR was lodged on the complaint of one Rajeshwar, who stated that he was residing as a tenant on the Ground Floor of House No.2040, Sector 2, 3 (Part), Rohtak since 2018. Smt. Neeraj (petitioner in CRM-M22224 of 2022) along with husband Kashish Kumar Kajal (petitioner in CRM-M-22376 of 2022) and her father-in-law Satish Kumar Kajal (petitioner in CRM-M-22384 of 2022) are landlords and residing on the First Floor. Smt. Neeraj was working as Manager in PNB Bank, Rohtak, while her husband Kashish Kumar Kajal was running a Honda Scooty agency at Kalanaur. It is alleged that Kashish Kumar Kajal and Smt. Neeraj frequently visited the complainant to borrow some household articles. In the last week of March 2022, Smt Neeraj enquired as to what was kept in a steel trunk lying in the floor of the complainant. The complainant replied that he had kept cash inside the trunk. Smt. Neeraj told the complainant that as he (complainant) remains away from the house most of the time and his wife also often visits her parental house to look after her aged parents, it was not safe to keep the trunk with cash in his portion of the house. She suggested that as she was working in the Bank, she knew how the boxes containing cash were kept safely. She suggested that if the trunk was shifted to the first floor where she resided along with other members of the family, it would remain safe.

In the last week of March 2022, Kashish Kumar Kajal along with his wife Neeraj came to the bedroom of the complainant and asked him to hand over the trunk to them. Neeraj counted the currency notes lying in the trunk. There were 990 packets of Rs.500/-, each, totalling Rs.45 lacs. It is alleged that at the time of counting cash, Satish Kumar Kajal was also present. Thereafter, Satish Kumar Kajal and Kashish Kumar Kajal picked up the trunk and took it to the first floor. The trunk was secured with 2 locks. About a week thereafter, the complainant asked Satish Kumar Kajal to show him the place where the trunk had been kept. However, Satish Kumar Kajal avoided doing so. The complainant became suspicious. On 16.04.2022, 17.04.2022 and 18.04.2022,

the complainant asked Kashish Kumar Kajal to return the trunk, however, he kept on putting off the matter on one pretext or the other. On 19.04.2022 at about 07.27 a.m, the complainant rang up Kashish Kumar Kajal and insisted that the trunk be returned to him. Thereafter, Kashish Kumar Kajal came to the drawingroom of the complainant along with the trunk, placed it there and went away. The complainant noticed that both the kundas (Swivels) of the trunk had been broken. He opened the locks and found the trunk empty. He immediately informed Kashish Kumar Kajal about this. Initially, he tried to resolve the dispute with Kashish Kumar Kajal. Sometimes, he was assured that the money would be returned. Sometimes they would disclaim all responsibility. Finally, they flatly refused and even started intimidating him. As a last resort, he filed the complaint.

Mr. Hooda, learned senior counsel appearing for the petitioners contends that the allegations are totally false. He argues that there is nothing to indicate that the trunk contained Rs.45 lacs as alleged. He further argued that there have been financial dealings between the petitioner- Kashish Kumar Kajal and the complainant. Petitioner- Kashish Kumar Kajal had taken some loan from the complainant. Even prior to lodging of the present complaint he had been depositing certain amounts in the bank account of the complainant, which is clear from the bank statements (P.2 to P.7). As regards the writing dated 19.04.2022 allegedly executed by the petitioner- Kashish Kumar Kajal, wherein, he had admitted that he had borrowed Rs.45 lacs from the complainant as he needed the same for his business, and obtained Rs.20 lacs on 18.10.2021 and that he would return the total amount of Rs.65 lacs within three months, Mr Hooda stated that this acknowledgment was procured under duress. He argues that the dispute, between him and the complainant is with regard to money transactions. It is essentially a civil dispute and is wrongly being given a criminal color.

It is not possible to accept the contentions of Mr. Hooda. As regards petitioner- Kashish Kumar Kajal the allegations are very clear and specific that he had taken the trunk containing the cash along with his father- Satish Kumar Kajal. On 16.04.2022, 17.04.2022 and 18.04.2022, the complainant asked Kashish Kumar Kajal to return the trunk, however, he kept on putting off the matter on one pretext or the other. On 19.04.2022 at about 07.27 a.m, the complainant rang up Kashish Kumar Kajal and insisted that the trunk be returned to him. Thereafter, Kashish Kumar Kajal came to the drawing-room of the complainant along with the trunk, placed it there and went away. The Kundas of the trunk had been broken. On opening, the complainant found the trunk 'empty' and the cash missing. Further, there is a clear acknowledgment dated 19.04.2022 of the petitioner Kashish Kumar Kajal stating that he had borrowed Rupees Forty Five lacs from the complainant on 19.04.2022 which

amount was needed by him for his business, that he had obtained Rupees Twenty lacs on 18.10.2021 in respect of which he had given two cheques as security and that he assured to return the full amount of Rupees Sixty Five lacs within three months. No complaint has been made by petitioner Kashish Kumar Kajal against anybody that this acknowledgment was obtained under pressure. The allegations are serious. The fact of taking away of the trunk and its return has not been denied by the petitioner- Kashish Kumar Kajal. The complainant, in fact, produced photographs to indicate this, though the petitioners, however, have not admitted that the trunk contained the cash as is alleged by the complainant.

The allegations are serious. There appears to be no ground to grant anticipatory bail to petitioner- Kashish Kumar Kajal. Thus, CRMM-22376 of 2022 is dismissed.

However, the aforesaid specific considerations are not attracted in the case of petitioner-Smt. Neeraj in CRM-M-22224 of 2022 and petitioner-Satish Kumar Kajal in CRM-M-22384 of 2022.

Notice of motion in the aforesaid two petitions.

Mr.R.K.Singla, DAG, Haryana accepts notice and seeks time to respond.

List on 10.08.2022.

Meanwhile, in the event of their arrest, the petitioners Satish Kumar Kajal and Smt Neeraj shall be released on interim anticipatory bail to the satisfaction of the Arresting/Investigating Officer, subject to the conditions provided under Section 438(2) Cr.P.C. The petitioners are also directed to join the investigation and cooperate with the Investigating Agency, as and when required.”

(8) In pursuance of the aforesaid interim order, the petitioner has joined investigation and she is still ready to cooperate with the Investigation Officer, as and when called to do so. Moreover, the “factum” and “legality” of stacking cash amount of Rs.45 lakhs (90 packets of Rs.500/- note each) at residence, in the manner alleged by the informant are debatable questions to be decided by the Court of competent jurisdiction during trial.

Hence, in such a scenario, there is no justification for custodial interrogation of the petitioner for recovery of the alleged cash amount.

(9) Consequently, present petition is allowed; the interim order dated 23.05.2022 is made absolute, subject to the conditions as envisaged under Section 438(2) Cr.P.C.

(10) It is also made clear that petitioner shall fully co-operate with the Investigating Officer as and when called for further investigation.

(11) The above observations may not be construed as an expression of opinion on merits of the case; rather confined only to decide the present bail matter.

(12) It is made clear that in case of any recurrence on the part of the petitioner, the State would be at liberty to move an application for recalling of this order.

(13) Disposed off accordingly.

(14) Pending application(s), if any, shall also stand disposed off.

02.04.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No