IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23736-2023
Date of decision : 10.05.2024

PRADIPTO GANGULY

... Petitioner

Versus

STATE OF HARYANA & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Cheema, Sr. Advocate assisted by
Mr. HDS Bains, Advocate
Mr. Satish Sharma, Advocate and
Mr. Prince Bharol, Advocate,
for the petitioner.

Mr. Rupinder Singh Jhand, Addl. A.G., Haryana.

Mr. Gurmandeep Singh Sullar, Advocate with
Ms. Devaki Anand Sullar, Advocate
for respondent No.2-complainant.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.49 dated 01.03.2023 registered under Sections 406/420/506/120B IPC (Sections 467, 468 and 471 IPC added later on) at Police Station Industrial Area, Bhiwani.

2. The present FIR came to be registered on the complaint of Naresh Kumar Ahuja son of Pannu Ram Ahuja with the allegations that entities controlled by him and his wife had paid a sum of Rs.2.02 crores to M/s MDM Televentures Pvt. Ltd. Gurugram for supply of mobile phone accessories but the same had not been supplied thereby

committing the offences in question. The copy of the complaint leading to the registration of the FIR is as under:-

"To
The Superintendent of Police,
Bhiwani.

Subject : Complaint seeking registration of case F.I.R. and legal action against 1. Pardeepto Gaungly 9830954544, 8766228966, 9315133916, 9831034344 2. Monish Mittal Mob. 8278857314 3. Deepak Nakra Mob. 8800008088 4. Silka Saloni Biswal 9903090102 5. Ashok Kumar Sahni C/o M.D.M. Televentures Pvt. Ltd (CIN-U 51909HR 2019PTC079047), 416, 4 F, Fourth Floor, ILD Trade Centre, Sector 47, Guguram, Haryana 122018.

Sir,

It is submitted that I, Naresh Kumar S/o Sh. Punnu Ram Ahuja am resident of Bajrang Bali Colony, Rohtak Gate, Bhiwani. I have been running whole sale trading business in the name and style 'Ahuja Enterprises' at Bajrang Bali Colony, Rohtak Gate, Bhiwani and am Proprietor of Ahuja Enterprises. Apart from this, I run whole sale trading and Distribution business in the name of another firm at Shop No. 2 Bajrang Bali Colony, Rohtak Gate, Bhiwani, in the name of Vaishno Distributions and the Proprietor of our Firm Vaishno Distributions, is none other than my wife Smt. Neelam Rani. The business of our both the Firms is run under the supervision and management of mine and my son Tanuj Ahuja. M.D.M. Televentures Pvt. Ltd. Guguram, Haryana 122018 run whole sale business of REALME MOBILE PHONES ACCESSORIES and the aforesaid accused persons of M.D.M. Televentures Pvt. Ltd, Guguram, were the *authorized Distributors/sales agent of entire Haryana State of REALME MOBILE PHONES ACCESSORIES. For about last two years, for the business of my aforesaid both the Firms, I had been purchasing REALME MOBILE PHONES ACCESSORIES on wholesale basis against the advance payment from the above said accused persons, I for purchasing REALME MOBILE PHONES ACCESSORIES on whole sale; at the instance of the accused persons, time to time, by way of RTGS on various dates till 24.11.2022 had been depositing money in the account of M.D.M. Televentures Pvt. Ltd. maintained with State Bank of India, Gurugram, Standard Charted Bank, Gurugram and at last on 24.11.2022, I at the instance of the accused; for purchase of the goods, by way of RTGS had transferred/deposited Rs. 77,00,000/- from our Firms Vaishno Distributions' Axis Bank Account in M.D.M. Televentures Pvt. Ltd's Standard Charted Bank, Gurugram Account. Apart from this, at the instance of the accused persons, for purchase of the goods, on 24.11.2022 from our other Firm Ahuja Enterprises' Axis Bank Account had deposited Rs. 17-17 lacs i.e. total Rs. 34,00,000/- in M.D.M. Televentures Pvt. Ltd's Standard Charted Bank, Gurugram Account. On 24.11.2022, after depositing the above said amount, the accused persons, despite my repeated requests, e.mails, telephonic requests and visiting them time and again personally and making my repeated requests; the stock of REALME MOBILE PHONES was not supplied to us; whereupon I settled the accounts on 7.1.2023 of the advance amount deposited with the accused persons and found that our firm Vaishno Distributors' Rs. 1,62,64,586.10 and of our firm Ahuja Enterprises*

Rs.39,71,296.75 i.e. total Rs.2,02,35,882.67 are deposited with the accused persons as advance money. In that regard, copy of email statement dated 7.1.2023 is enclosed herewith. I have made requests time and again personally, by making phone calls and by way of e.mails to the accused persons that either the accused as per our demand should supply the REALME MOBILE PHONES accessories to us or should return our Rs. 2,02,35,882.67 to us but the accused earlier had been making excuses on one pretext or the other and the accused out of our advance money deposited; in lieu of some money, had given us Maruti Eco Commercial loading car Registration no. HR 55AJ 7609 with value of Rs. 2,00,000/- to me and the accused had assured to get this car transferred in our name at the earliest but the accused persons have not get transferred the said car in our name till date; and not the accused have flatly refused to supply us the goods and to return our aforesaid amount; rather extended threat that if we talk about the money even then me and my son Tarun Ahuja would have to face dire consequences and would get me eliminated. It is pertinent to mention here that the accused persons with their bad intention not to return our aforesaid amount and with an intention to avoid their liability of State Bank of India, Gurugram; they got registered fake and false report within their Company Account no. 40469785077 of State Bank of India, Gurugram to the effect that the amount of Rs. 36,00,000/- are due to them from our Vaishno Distributors; whereupon the State Bank of India, Gurugram having sent us a notice/letter dated 20.1.2023 had directed that as to what amount of accused persons and their company is *due from us; we should deposit the above said amount in the aforesaid account of the above company of the accused notwithstanding that even a single penny is due from us to the accused/their company/Firm from our Firm rather our aforesaid amount is due to us from the accused persons and their Firm and we are in possession of confession mail thereof. As such, the accused persons aforesaid having connived amongst themselves and hatching a conspiracy; having committed cheating, forgery and breach of trust have usurped our Rs. 2,02,35,882.67 and the accused having refused to return our said money have committed cheating. I have come to know that the accused persons; likewise me; have usurped the money of other traders also; due to which, I and my family have to face mental and economic harassments. It is therefore, prayed to your good-self that after registering case F.I.R. against the accused immediately; the accused may kindly be arrested at the earliest because the accused at any time to avoid payment of my amount and that of other traders; by closing their office may fled abroad. The accused may kindly be get awarded deterrent punishment and our amount of Rs. 2,02,35,882.67 may be got recovered from the accused to us and we may be imparted justice and oblige.*

Thanking you,

Sd/- Naresh Kumar S/o Punnu Ram Ahuja,

Dated:3.2.23 R/o Bajrang Bali Colony, Rohtak Gate,

Bhiwani. Mob. No. 9992092500"

3. Pursuant to the registration of the FIR, the complainant was joined in investigation and the records and accounts statements pertaining to Ahuja Enterprises and Vaishno Distribution firms were

obtained. The records and accounts statements of 7 accounts of M/s MDM Televentures Pvt. Ltd. were obtained and taken into possession. From the scrutiny of those documents it was found that the co-accused Silka Saloni Biswal, Supriya Nakra, Monish Mittal and Ashok Kumar were the authorized signatories of the company's bank accounts.

Tanuj Ahuja, the son of the complainant produced the master data of the accused company M/s MDM Televentures Pvt. Ltd., the list of debtor and creditors, the list of directors of the company and four cheques. From the scrutiny of these documents it was found that the present petitioner was the earlier Director of the Company and is the current Director of the Company. The petitioner had issued two cheques from his personal account in favour of the complainant which had been dishonoured.

Co-accused Silka Saloni Biswal, the daughter of the present petitioner was shown as having retired from the Company on 05.04.2022 whereas her signatures were appearing on the cheques dated 15.01.2023 and 20.01.2023. These signatures were found to be forged by co-accused Monish Mittal. The signatures of Silka Saloni Biswal were also found appearing on the Distributorship Agreement of M/s MDM Televentures Pvt. Ltd. with Realme dated 29.08.2022.

Monish Mittal was arrested and recoveries were effected from him. He disclosed that he had forged the signatures of Silka Saloni Biswal on two cheques in favour of the complainant firms for an amount of Rs.39,41,672/- and Rs.1,60,31,369/-. Accordingly, Sections 467, 468, 471 IPC were added in the case.

4. The petitioner filed a petition for the grant of anticipatory bail and was granted the concession of interim bail vide order dated 29.05.2023. During the pendency of this petition, various orders were passed seeking details of the investigation conducted. It was found that the petitioner was a Director of M/s MDM Televentures Pvt. Ltd. between 01.02.2020 and 12.02.2020. Thereafter, he joined as a Director on 02.04.2022 and continued as such. The petitioner was found to be the person behind all operations. Silka Saloni Biswal was his daughter and the authorized signatory in the bank accounts of M/s MDM Televentures Pvt. Ltd. She was also a whole time Director. Ashok Kumar Sahani was the Director of M/s MDM Televentures Pvt. Ltd. from 30.11.2021 till date. He is the father of Supriya Nakra who's husband Deepak Nakra was an employee of the REAL ME Mobile Telecommunication Company Cyber City, Gurugram. Supriya Nakra was the authorized signatory of the accounts of M/s MDM Televentures Pvt. Ltd., the OTP approver of the main accounts of the Company and also the administrative head. Co-accused Monish Mittal was first a Director of M/s MDM Televentures Pvt. Ltd. after which he was appointed as Chief Financial Officer and an authorized signatory in the bank accounts. He was arrested and has been granted the concession of regular bail.

5. The State filed affidavits showing the details of the bank accounts to which money was transferred from the bank accounts of the

accused Company M/s MDM Televentures Pvt. Ltd. A perusal of the chart produced would show that a huge amount of money in crores has been transferred from the bank accounts of the Company into the accounts of the petitioner, his family members other accused and companies/entities controlled by the other accused. It has been stated in the reply that as there are a large number of transactions and the investigations regarding the same were on going.

6. The learned Senior counsel for the petitioner contends that a pure business dispute between the parties has been given the colour of a criminal offence. In fact, the parties had been dealing with each other for two years preceding the FIR. Admittedly, money had been received from the complainant firms but due to failure of business and a financial crunch, material could not be supplied to the complainant-company. No offence as alleged was made out and the dispute, if any is of a civil nature. The accused company itself had entered into an MoU with another entity to revive its fortunes. The petitioner was not a Director but only a sales head. He became a Director only on 02.04.2022 to honour the MoU. The complainant-Naresh Kumar Ahuja had entered the office of the petitioner and had forced him to sign two cheques from his personal account. Based on the said cheques, proceedings under Section 138 of the Negotiable Instruments Act had been initiated against him. Similarly, the two cheques purportedly signed by Silka Saloni Biswal were in fact signed by Monish Mittal as has been admitted by him. Therefore, the accused were being coerced to issue cheques in favour of

the complainant entities. As the case was based on documentary evidence and the petitioner had joined investigation, he was entitled to the concession of anticipatory bail.

7. On the other hand, the learned State counsel while referring to the replies by way of affidavits dated 16.08.2023, 18.03.2024 and 22.04.2024 contends that admittedly, the accused company received a huge amount of money towards sale of mobile phone accessories. Instead of forwarding the payment to the REAL ME Mobile Telecommunication Company for the supply of the accessories, the accused company and its officers including the petitioner had siphoned off the money received from the complainant. Not only this, crores of rupees had been siphoned off from the accounts of the accused company into other accounts controlled by the petitioner, his co-accused and entities controlled by them. The investigations regarding the bank transactions showing siphoning off of money was going on. As the offence was *prima facie* established and the investigation was to be taken to its logical conclusion, the petitioner was not entitled to the concession of anticipatory bail moreso as he was not cooperating in the investigation and was an accused in four other cases bearing FIR No.60 dated 23.02.2023, U/s 406, 420, P.S. Rajpur Dehradun, FIR No.252 dated 01.05.2023, U/s 406, 420, 506, P.S. Ambala Cantt., FIR No.603 dated 26.07.2023, U/s 406, 420, 506, 120B, P.S. Hisar City and FIR No.395 dated 15.06.2023, U/s 408 and 420 IPC, P.S. Gurgaon Sadar.

8. The learned counsel for respondent No.2-complainant, while opposing the prayer for the grant of anticipatory bail contends that the petitioner had issued two commitment letters admitting the liability of the accused company to pay the complainant/respondent No.2 and his family. Silka Saloni Biswal had represented herself to be a Director in one such letter though she had resigned from her post. Four post-dated cheques handed over by the accused to repay the complainant were dishonoured leading to the initiation of proceedings under Section 138 of the Negotiable Instruments Act. The question of the complainant pressurizing the petitioner did not arise. In fact, the cheques had been issued by the petitioner and the other accused as the complainant was demanding his money. In the present case, it was a clear case of cheating inasmuch as in the petition itself it has been admitted in para 5 that the material could not have been supplied to the complainant-firm as the accused company had not received the same from M/s Oppo India Pvt. Ltd. During investigation in response to a Notice under Section 91 Cr.P.C., a reply was submitted on 20.09.2023 as per which it has been clearly stated that M/s MDM Televentures Pvt. Ltd. had not paid any amount to M/s Realme Mobile Telecommunication India Pvt. Ltd. and therefore, the question of providing material/mobile phone accessories did not arise. (The copy of the reply dated 20.09.2023 is marked as **X)**. Co-accused Ashok Kumar Sahani himself had levelled allegations against the petitioner of siphoning off more than Rs.30 crores and FIR No.395 dated 15.06.2023, U/s 408 and 420 IPC, P.S. Gurgaon Sadar

stands registered against the petitioner and others. The accused company was in conspiracy with Mr. Madhav Seth, CEO Asia of the Realme Company. There was an attempt to tamper with the evidence by writing to the banks to remove the beneficiary names from the bank statements. A back dated resignation of Silka Saloni Biswal showing that she had resigned w.e.f 04.05.2022 though she had actually resigned on 07.12.2022 was prepared. The investigation conducted so far would show that a huge amount of money in crores had been siphoned off from the bank accounts of M/s MDM Televentures Pvt. Ltd. into the personal account of the petitioner, other directors and entities controlled by them. As the offence was *prima facie* established and the investigation was to be taken to its logical, the petitioner was not entitled to the concession of anticipatory bail.

9. I have heard the learned counsel for the parties.

10. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

> "*It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent*

No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. ***In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be***

looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

11. A perusal of the record would show that after the complainant entities transferred a sum of Rs.2.02 crores into the bank accounts of the accused company, the said company did not transfer the payment to M/s Realme Mobile Telecommunication India Pvt. Ltd. for supply of mobile phone accessories. On the contrary, the amount received from the complainant as also various other amounts received from other persons/companies have been siphoned off in a systematic manner by the petitioner and his co-accused and the entities controlled by them. Though the investigations are ongoing, the details of some of the transfers are as under:-

Sr. No.	*Name of compaies*	*Name of Banks and accounts numbers*	*Time period of transactions*	*Amount*	*Name of beneficiary*	*Relation of accused*
1	*MDM*	*Standard Chartered Bank Gurugram A/c No.53105121597 & A/c No.53105122593*	*03.05.2019 to 30.11.2022*	*97,67,414/ Received by the present petitioner Pardipto Ganguly from MDM*	*Pardipto Ganguly*	*Main accused and namely in FIR*
2	*MDM*	*State Bank of India A/c No.0000003835297834*	*03.05.2019 to 30.03.2020*	*15, 63, 946/- Received by the present petitioner Pardipto Ganguly from MDM*	*Pardipto Ganguly*	*Main accused and namely in FIR*

3	*MDM*	*Standard Chartered Bank Gurugram A/c No.53105121597*	*26.11.2020 to 15.09.2022*	*83,25,000/- Received by the Minirva Ganguly from MDM*	*Minirwa Ganguly*	*Wife of Pardipto Ganguly*
4	*MDM*	*Stand Chartered Bank Gurugram A/c No.53105121597*	*13.11.2019 to 14.11.2021*	*2,00,90,000/- Received by the Monish Mittal from MDM*	*Monish Mittal*	*Main accused & namely in FIR*
5	*MDM*	*Standard Chartered Bank Gurugram A/c No.53105121597 & A/c No.53105122593 & SBI A/c No.00000038352978341*	*12.11.2021 to 22.11.2021*	*71,80,000/-*	*Dynamic Sales*	*Company of co-accused Monish Mittal*
6	*MDM*	*SBI A/c No.00000038352978341*	*22.05.2019 to 22.08.2019*	*67,00,000/-*	*A.R Associates*	*Relative of co-accused Monish Mittal*
7	*MDM*	*Standard Chartered Bank Gurugrum A/c No.53105121597*	*06.08.2020 to 06.10.2022*	*2,00,000/-*	*Pushpak Ganguly*	*Brother of co-accused Pardipto Ganguly*
8	*MDM*	*Standard Chartered Bank Gurugrum A/c No.53105121597*	*16.05.2020 to 16.10.2020*	*18,00,000/-*	*Nidhi Hasija*	*Relative of co-accused Deepak Nakra*
9	*MDM*	*Standard Chartered Bank Gurugrum A/c No.53105121597 & A/c No.53105122534 & A/c No.00000038352978341*	*20.10.2020 to 06.10.2022*	*11,59,742/-*	*Ashish Sangwan*	*Previous Director of MDM Company & friend of co-accused Deepak Nakra*

10	*MDM*	*Standard Chartered Bank Gurugrum A/c No.53105121597 & SBI A/c No.00000038352978341*	*30.04.2019 to 11.03.2020*	*4,43,85,000/-*	*RVD Sales*	*Relative of co-accused Monish Mittal*
11	*MDM*	*Standard Chartered Bank Gurugrum A/c No.53105121597 & A/co No.53105122534 & A/c No.53105122135 & A/c No.53105122135*	*03.12.2020 to 10.09.2022*	*2,05,61,610/-*	*Vihan Associates*	*Relative of co-accused Supriya Nakra & Ashok Sahani*

Sr. No.	*Name of compaies*	*Name of Banks and accounts numbers*	*Time period of transactions*	*Amount*	*Name of beneficiary*	*Relation of accused*
1	*MDM*	*Standard Chartered Bank Gurugram A/c No.52105121597*	*15.06.2020 to 02.01.2021*	*6,00,000/-*	*Pardipto Ganguly*	*Main accused*
2	*MDM*	*State Bank of India A/c No.000000383529783*	*11.09.2022 to 20.10.2022*	*15,00,000/-*	*Pardipto Ganguly*	*Main accused*
3	*MDM*	*Standard Chartered Bank Gurugram A/c No.52105121597*	*26.11.2020*	*60,00,000/-*	*Minirwa Ganguly*	*Wife of Pardipto Ganguly*
4	*MDM*	*Standard Chartered Bank Gurugram A/c No.52105121597, 53105122135 & 53105122534*	*13.10.2020 to 08.12.2022*	*2,00,33,894/-*	*Kavita Enterprises*	*Relative of Deepak Nakra, Supriya Nakra & Ashok Kr. Sahni*

5	*KAVITA ENTERPRISES*	*HDFC Bank Udyog Vihar, Gurugram, A/c No.59209910109066*	*08.12.2022*	*10,00,000/-*	*Deepak Nakra*	*Main accused*
6	*MDM*	*Standard Chartered Bank Gurugram A/c No.52105121597*	*24.11.2022*	*3,00,00,000/-*	*TNS Solutions Company*	*Complainant company in FIR No.60//23 P.S. Rajpur, Dehradun (U.K.)*
7	*MDM*	*SBI A/c No.00000383529778341 & others*	*12.11.2021 to 13.09.2022*	*1,39,50,000/-*	*Dynamic Sales*	*Company of co-accused Monish*
8	*MDM*	*Standard Chartered Bank Gurugram A/c No.53105122135 & 53105122534*	*02.12.2020 to 18.01.2022*	*1,09,00,000/-*	*Vihan Associates*	*Company of relative of Supriya Nakra, Ashok Kumar Sahani*

12. Interestingly, an averment has been made in para 5 of the petition that the material had not supplied to the complainant-firms on account of the fact that the same had not been received from the Company. This averment has been found to be specifically incorrect in view of the communication dated 20.09.2023 addressed to the Investigating Officer of the present case by M/s Realme Mobile Telecommunication India Pvt. Ltd. stating that no payment had been received by them from M/s MDM Televentures Pvt. Ltd. for supply of any material/accessories.

13. The argument that the dispute is purely civil in nature cannot be accepted. The accused company received Rs.2.02 crores from the complainant companies and instead of transferring the same to M/s Realme Mobile Telecommunication India Pvt. Ltd. for supply of

material, transferred the same along with various amounts received from other individuals/companies into bank accounts controlled by the petitioner, his family members and associates. Thus, the offences are *prima facie* established from the material on record. In this scenario, merely because the petitioner has joined investigation would not be a sufficient ground to grant him the concession of anticipatory bail. Further, other than the instant FIR, the petitioner is an accused in multiple cases. Therefore, the criminal antecedents of the petitioner also do not entitle him to the grant of anticipatory bail.

14. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

15. However, the observations made hereinabove are only for the purposes of deciding this bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

10.05.2024
JITESH

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