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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 30724 of 2023 (O&M)
Date of Decision: 09.04.2024

Harkirat Singh Sandhu

.... Petitioner

Versus

State of Union Territory of Chandigarh, through
Station House Officer, Police Station Central,
Sector-17, Chandigarh

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajat Gautam, Advocate
for the petitioner.

Mr. H.S. Gharoo, Advocate for
Mr. Amit Kumar Goyal, APP, U.T., Chandigarh
for the respondent.

Mr. M.S. Rana, Advocate
for the complainant-Punjab & Sind Bank, Chandigarh.

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HARKESH MANUJA, J. (ORAL)

CRM-26578-2023

Application is **allowed**, as prayed for, subject to all just exceptions. Exemption from filing certified / typed copies of Annexures P-1 to P-12, is granted.

MAIN CASE

The petitioner, by way of present petition filed under Section 438 Cr.P.C., prays for grant of pre-arrest bail in case FIR No. 0042, dated 01.04.2023, under Sections 406, 420 & 120-B of IPC, registered at Police Station Central Sector-17, Chandigarh, wherein he being a borrower / lender of the complainant-Bank has been arrayed as an accused for having played a fraud by diversion of funds from Cash Credit (CC) Limit to personal accounts, misappropriating the hypothecated stock as well as not even having installed the machinery purchased against Term Loan, at the proposed site, besides defalcation of Term Loan obtained for purchase of land for setting up of rice mill, instead of paying the same to his vendor-seller.

[2] Learned counsel for the petitioner submits that from a perusal of the contents of FIR, no offence as alleged is made out as the present is at best a case of non-return of the loan amount in time, thereby involving no criminality therein. He further submits that vide order dated 12.07.2023 passed by this Court, the petitioner was directed to join investigation with further stipulation that he would get the machinery inspected from the Investigating Officer in association with the Bank officials, as also to produce the details regarding purchased stocks and file an affidavit giving details of his personal assets and in pursuant thereof, a joint inspection in the presence of the officials of complainant-Bank was even carried out on 23.08.2023, wherein and the machinery purchased against the Term Loan availed for the said purpose was found installed at one another unit being run by the petitioner in the name of M/s. H.S. Rice & General Mills, Madhir Road, Village Husnar, Tehsil Giddarbaha, District Sri Muktsar Sahib, however, instead of the site in question, been purchased against the Term Loan obtained from the complainant-Bank. It is further submitted that the petitioner has even been granted No Objection Certificate from the other lender, i.e. the Canara Bank *qua* M/s. H.S. Rice & General Mills. He also submits that as regards the stock hypothecated with the complainant-Bank, vide application bearing CRM-35787-2023, relevant documents in the shape of bills have been produced on record as Annexure P-14, which belies the allegations against the petitioner of having misappropriated the Cash Credit Limit obtained in this regard. With regard to the diversion of funds from the Cash Credit Limit to the personal accounts, it has been explained that the same was done just to discharge the liability towards the labour, who were retained under the hope of setting up and running of the unit and there was no *mala fide* behind it. He also submits that the petitioner has already joined the investigation and cooperating therein; thus, his custodial interrogation is not required and even a sum of Rs. 25,00,000/- has also been deposited by the petitioner with the complainant-Bank, so as to *prima facie* show his *bona fide*.

[2.1] Learned counsel for the petitioner further points out that there was no *mala fide* intent on the part of petitioner as the revenue records *qua* the land purchased by the petitioner never reflected any amount due towards the PUNGRAIN or any other agency, which fact was even got verified by the officials of the Bank before granting loan. He submits that in fact, there was a fraud played upon the petitioner by the previous owner which led him to the present situation and a complaint dated 28.10.2022 (Annexure P-4) in this regard was also made to the police official against the previous owner, however, no action was taken thereupon and therefore, before filing of the present petition, an application / petition under Section 156(3) Cr.P.C. was also filed against the previous owner by the petitioner which was pending consideration with the Court concerned.

[3] No other argument has been raised on behalf of the petitioner.

[4] On the other hand, learned counsel for the complainant-Bank as well as learned counsel representing the respondent-U.T., Chandigarh, vehemently opposed the prayer made on behalf of the petitioner, while submitting that *mala fide* on the part of petitioner was writ large on the face of it, as without obtaining any No Objection Certificate from the PUNGRAIN for setting up of rice mill over the site in dispute, there was no question of purchasing raw material / stock and thus, the contention raised in this regard on behalf of the petitioner was wholly misplaced and based on a fabricated document.

[4.1] In addition, learned counsel representing the complainant-Bank points out that the petitioner was even having litigation with the previous owner of the land purchased against the Term Loan as having got released the total amount from the bank, major part of the sale consideration was never paid by the petitioner to the vender-seller regarding which a litigation in the form of a suit for recovery as well as complaint under Section 138 of the Negotiable Instruments Act is pending consideration before the Courts at Gidderbaha. He also submits that even the machinery was shifted from the site in question to some different site-land, which was already mortgaged with another financial institution, namely, Canara Bank, thus, it was a clear-cut case of cheating and criminal breach of trust committed by the petitioner.

[5] After hearing learned counsel for the parties and having gone through the paper-book / relevant record, I am unable to find substance in the submissions made on behalf of the petitioner.

[6] In the present case, the petitioner was granted financial assistance by the complainant-Punjab & Sind Bank in the form of three loan facilities vide three separate sanction letters dated 20.03.2020, i.e. (i) Term Loan to the extent of Rs. 39,00,000/-regarding purchase of land of 23 Kanal and 19 Marla, comprised in Khewat No. 832, Killa No. 47//16/2/2/2(0-17), 17/2(2-9), 18/2 (2-9), 23 (8-0), 24 (8-0), 25/1 (2-4) **(for short "site in question")** situated within the revenue estate of Village Husnar, Tehsil Giddarbaha, District Sri Muktsar Sahib for setting up of a rice mill against an equitable mortgage with the financial institution; (ii) financial assistance to the extent of Rs. 78,50,000/- for purchase of machinery and stocks, hypothecated with the financial institution; and (iii) financial assistance to the tune of Rs. 35,00,000/- as Cash Credit Limit for running of the business.

[7] On account of failure to discharge the regular instalments, the account of petitioner was declared as Non-Peforming Asset (NPA) on 31.03.2021 followed by issuance of notice dated 05.04.2021 under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Having failed to persuade the petitioner, recovery proceedings were initiated against the petitioner at the instance of complainant-Bank before Debts Recovery Tribunal on 01.10.2021 for a sum of Rs.1,67,36,786.74 followed by filing of complaint dated 02.02.2022 with the allegations of diversion of funds from the Cash Credit Limit to the personal account of the petitioner and his family members, besides no machinery been installed at the site in question, though having availed the financial assistance towards the same and also about mis-appropriation of the hypothecated stock worth Rs. 47,86,350/-, lying in the premises as per the report dated 31.12.2020. The aforesaid complaint dated 02.02.2022 was comprehensively inquired into, which resulted into registration of the FIR in hand.

[8] A perusal of the record as well as the Joint Unit Visit Report dated 23.08.2023 relied upon by the petitioner, prepared in pursuance to an order dated 12.07.2023, passed by this Court, which is taken on record as **Mark-'X'**, shows that the machinery purchased in terms of Term Loan obtained from the complainant-Bank was not found installed at the site purchased against the Term Loan facility availed from the complainant-Bank. In fact, the machinery was found at a different place / premises, though situated within the same revenue estate, whereas the said premises was admittedly purchased by the petitioner against a different loan facility availed from another financial institution, namely, Canara Bank. The petitioner has not been able to produce any letter / document, so as to *prima facie* show that any permission was ever obtained from the complainant-Bank herein for shifting the machinery from the site in question to a different place or even any intimation was ever served upon the complainant-Bank in this regard.

[9] Furthermore, a perusal of the paper-book shows that even against the site in question, the entire financial assistance sanctioned by the complainant-Bank was availed by the petitioner, though a dispute with the previous owner-vendor was pending adjudication as regards the payment of balance sale consideration to him, whereas no explanation was put-forth by the petitioner in the entire petition, as to under what circumstances the complete financial assistance towards the purchase of land in the shape of Term Loan was got released and availed by him, once the entire purchase price was never delivered in favour of the purchaser and as to where the said amount was spent, which clearly reflects that right from beginning the intent of the petitioner was to cheat and de-fraud the financial institution and the entire loan facility was availed and got released under an inducement with an object to mis-appropriate the same, which further finds corroboration from the fact that certain funds were even diverted by the petitioner from the Cash Credit Limit to his personal account as well as that of his family members.

[10] Equally important, in the humble opinion of this Court, there is sufficient substance in merit made on behalf of the complainant-Bank to the effect that once no machinery was found set up in the site in question, there was no point in getting the Term Loan released against purchase of the raw material and *prima facie* funds obtained against the same were also misappropriated.

[11] Last but not the least, learned counsel for the petitioner also points out that reasonable offer has been extended to the complainant-Bank towards discharge of the loan liability, as the petitioner is ready to pay a sum of Rs. 1,15,00,000/- over and above the amount of Rs. 25,00,000/- paid by him in terms of previous order passed by this Court; however, the same has not been accepted by the complainant-Bank. In this regard, it has been submitted by the learned counsel representing the complainant that even the principal amount regarding which the recovery proceedings were initiated before the Debts Recovery Tribunal, wayback in the year 2021, was almost Rs. 1,67,36,786.74 and thus, being a public institution and also the custodian of public funds, after a gap of more than 2½ years, the total liability could not be settled for a sum of Rs. 1,40,00,000/-. In any case, the issue of settlement and its financial viability, in the given circumstances, lies purely within the domain of the parties concerned and this Court finds itself unable to venture into this arena being not an expert in this filed.

[12] Learned counsel for the petitioner also points out that the petitioner is even ready to discharge his liability towards the vendor and obtain No Objection Certificate from him so as to make the site in question free from all encumbrances attached thereto, however, even the said offer has not found favour with the complainant-Bank, as the learned counsel representing it submits that a separate dispute is pending between the previous owner and the PUNSUP, to which petitioner is not in a position to ensure that the PUNSUP is not having any right or encumbrance over the site in question.

[13] In the humble opinion of this Court, there is no merit in the contention raised on behalf of the petitioner that the present is a pure and simple case of civil nature, merely because the recovery proceedings have already culminated before the Debts Recovery Tribunal vide decision dated 19.05.2023 and in pursuance thereof, Recovery Certificate/285/2022 has already been issued in favour of the complainant-Bank, which is following the process of recovery in pursuance thereof. No doubt, every act of cheating involves civil wrong, however, the present is not merely a case of non-payment of loan amount, but relates of its apparent mis-appropriation with dishonest intent and thus, pre-dominantly involves criminal offence, wherein the petitioner got released the loan amount from the complainant-Bank, having deceived and induced it in a fraudulent and dishonest manner by making false and misleading representations through his acts and omissions.

[14] In view of the discussion made hereinabove, the installation of machinery purchased from the funds of complainant-Bank at a different site, coupled with using of Cash Credit Limit against purchase of raw-material with no machinery being ever installed in the site in question and also obtaining and utilization of the Term Loan against purchase of the site in question without making payment of the entire sale consideration to the previous owner, clearly established the criminality involved in the case in hand and the fraud in cheating committed by the petitioner by the petitioner with the financial institution.

[15] In the aforementioned facts and circumstances, the petitioner does not deserve the concession of grant of anticipatory bail, which undoubtedly is a discretionary relief and is to be granted in exceptional situation as it may further encourage dishonesty. Reference in this regard can also be made to a decision rendered by the Hon'ble Apex Court in case of ***"Srikant Upadhay others Versus State of Bihar and another"***, reported as ***2024 INSC 202***. Relevant paragraph No.8 of the said judgment is reproduced hereunder:-

> *" It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the*

> *consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J.Mannan & Anr.).”*

[16] Thus, for the reasons recorded hereinabove, the petitioner is not entitled for grant of discretionary relief of pre-arrest bail. Resultantly, the present petition is **dismissed** being devoid of merits

[17] Pending miscellaneous application(s), if any, shall also stand disposed off.

April 09, 2024 **(HARKESH MANUJA)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes*
Whether Reportable	*Yes*