IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34185-2023
Date of Decision: 20.01.2024

SANJAY DAHIYA

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CRM-M-41134-2023

SAVITA DAHIYA

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.S. Duhan, Advocate
for the petitioner in CRM-M-34185-2023.

Mr. S.S. Sangwan, Advocate
for the petitioner in CRM-M-41134-2023.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

Mr. Aseem Aggarwal, Advocate
for the complainant.

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JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No.CRM-M-34185-2023 titled as Sanjay Dahiya Versus State of Haryana and CRM-M-41134-2023 titled as Savita Dahiya Versus State of Haryana as the same are arising out of the same FIR. However, for the sake of convenience the facts have been taken from CRM-M-34185-2023.

2. The prayer in the present petitions under Section 438 Cr.P.C. is for the grant of anticipatory bail in case bearing FIR No.124

dated 04.04.2023 registered under Sections 406, 420, 467, 468, 471, 120-B of the IPC at Police Station Chandimandir, District Panchkula.

3. The present FIR came to be registered at the instance of Gulwinder Sharma against the petitioners and one Ruchi Jain and reads as under:-

> *"Sir, a one complaint No. 1067-PW Dated 12.08.2022 from DCP Office Panchkula and one complaint No. 1067-PW dated 12.08.2022 received in the police station by the order of higher officials and District Attorney for registration of the case, the list of which is as follows: To the Deputy Commissioner of Police, Public Window-Complaint Section, Mini Civil Secretariat, Panchkula, Haryana. Complaint against :- 1) Smt. Savita Dahiya W/o Sanjay Dahiya, R/o H.No. 841, Sector 25, Panchkula (M. No. 6280530317, 7717275055), 2) Sanjay Dahiya S/o Late Hari Chand Dahiya, R/o H.No. 841, Sector 25, Panchkula (Mobile : 9357548717), 3) Smt. Ruchi Jain wife of Resident of H.No 4-A, 1st Floor, Guru Nanak Enclave, Gate No. 1, Dhakoli, Zirakpur, Punjab, Office Plot No. 221, HSIIDC Industrial Estate, Alipur, Barwala, Panchkula (Mobile 8264937572, 7508128008). Complaint Subject: Savita Dahiya and Sanjay Dahiya by preparing fake partnership deed M/s. GSP BIOTECH have committed distrust, cheating, fraud and illegal possession on the business property of partnership share with forged documents of my M/s. GSP BIOTECH and by opening the forged account of partnership firm making transaction of firm in that forged account and their saving account have caused loss to me in an illegal manner for an amount of approximately Rs.1.25 crores (One Crore twenty five lacs only) and giving assistance by Ruchi Jain to both of these in this illegal act. The address of M/s. GSP*

BIOTECH is Plot No. 221, HSIIDC Industrial Estate, Alipur, Barwala Panchkula. Address of Applicant Flat No B304, GH-1, Sector 23, Panchkula. The permanent address of Sanjay Dahiya, Savita Dahiya (Main Accused No. 1 & 2) is House 841, Sector 25, Panchkula and Axis Bank Sector 25, Panchkula, Canara Bank Sector 25, Panchkula (the bank through which the fake banking transactions of the firm have taken place). All these addresses comes under the jurisdiction of Police Station Chandimandir, Sector 23, Panchkula. Sir, it is respectfully submitted here that:- 1. I, Gulvinder Sharma S/o Late Sh. Vasdev Sharma and Sanjay Dahiya (Accused No. 2) have started a partnership firm in the name M/s GSP BIOTECH GST No. 06AATFG5634M1ZS, PAN No. AATFG5634M) in Plot No. 221, HSIIDC Indi. Estate, Alipur, Barwala, Panchkula on 17.07.2019. In this firm for the test of quality of medicines and its raw material, to issue Drugs Test Report, Drug License No. 34-LAB HR, Form 37 Rule 150-C) dated 22.01.2020 was received from State Drug Controller-cum-Licensing Authority, FDA Haryana under Drug Cosmetic Act, 1940 and Rules, 1945, but after some time Sanjay Dahiya started preparing false and unfair test report of the medicines under that license, due to all these and some technical reasons of the business. I have given dissolution notice dated 17.12.2020 of 30 days to Sanjay Dahiya to dissolve the partnership through my advocate, under which the partnership of M/s. GSP Biotech was dissolved. This notice was served under Section 43 of the Partnership Act, 1932 as per the condition No. 11 of partnership dated 17.07.2019 of M/s. GSP Biotech, the partnership was 'At Will' and as per Section 43 of the Indian Partnership Act, 1932 there is a legal provision of dissolution through legal notice (SEE ANNEXURE 1 COPY OF PARTNERSHIP DEED Dated 17/07/2019)

(SEE ANNEXURE 2 COPY OF LEGAL DISSOLUTION NOTICE) 2. This Dissolution has also been accepted by the State Drug Controller and Licensing Authority, FDA Haryana, Haryana. Sanjay Dahiya in a reply to the show cause notice of State Drug Authority has also accepted the dissolution of partnership under 'Section 43 of The Indian Partnership Act 1932'. Sanjay Dahiya has also accepted this dissolution in his reply in Case No. CS/122/2021 of Civil Court Panchkula of 'Rendition of Accounts' filed by Gulvinder Sharma. Sanjay Dahiya has also accepted this dissolution under Section 43 in the illegal Partnership Deed dated 18.12.2020 in his and his wife's name Smt. Savita Dahiya prepared by Sanjay Dahiya. 3. The only original account of M/s GSP BIOTECH (Partnership) is with UCO BANK, VILL. DARIYA Chandigarh, whose account number is 32920510000762. M/s GSP BIOTECH (Partnership) has also taken a loan of Rupees 50 LAKH from the same bank branch in which Sanjay Dahiya and Gulvinder Sharma are Joint Signatory. But Sanjay Dahiya even after the dissolution of the partnership firm with malafide intention continued the work under the dissolved company, which is illegal and against Section 53 of The Indian Partnership Act 1932'. In order to continue this work Sanjay Dahiya kept on issuing bills in the name of M/s GSP BIOTECH and fraudulently kept on taking the payments of sales bills of business of M/s. GSP Biotech from February, 2021 in his savings bank account A/c No. 918010096929468, Axis Bank, Sector 25, Panchkula, which is in the name of Sanjay Dahiya. He has taken an amount of above about 11.50 Lakhs in his saving account up to August, 2021 and after August, 2021 also got transferred in his saving account the lakhs of rupees of fund of the bill account of the business of M/s. GSP Biotech. Sanjay

Dahiya has committed this fraud intentionally, so that Sanjay Dahiya while settling the accounts of default can cause loss to me while getting undue benefit to himself (See Annexure 3 - Copy of Axis Bank Statement) 4. It is very important also to mention here that Sanjay Dahiya's has to settled the account with me on 16.01.2021 after the dissolution of the partnership of M/s GSP BIOTECH, but he in connivance with his wife Smt. Savita Dahiya prepared a forged partnership deed on 18.12.2020 before the dissolution of M/s GSP BIOTECH. On 18.12. 2020 Smt. Savita Dahiya wife of Sanjay Dahiya with the help of Sanjay Dahiya after committing fraud got transferred my 50% share of M/s GSP Biotech by that partnership deed, whose market value comes to 1.25 crore got transferred in her name very cleverly by preparing forged partnership deed. This forged partnership deed has been submitted before the State Drug Authority, FDA Haryana. Both the husband wife has not given me any amount in place of my 50% share, nor have done any transaction or entered any written agreement with me. As per the condition No. 10 of the Old Partnership Deed dated 17.07.2019 of M/s GSP BIOTECH (Partnership), which is as follow :- "That no party shall be entitled to either mortgage, assign or sell his/her share to any outsider or create any change on the partnership assets without the written consent of other partner". But Savita Dahiya and Sanjay Dahiya without taking any written consent from me and without settling any account with me, by committing forgery and cheating, illegally took away my share of business property, which is about Rs 1.25 Crore (Rs One crore twenty five lacs only) transferred Savita Dahiya in her name, whereas, the old partnership of M/s GSP BIOTECH (Partnership) was to expire on 16.01.2021. (SEE ANNEXURE 4 - COPY OF NEW PARTNERSHIP

DEED OF M/S GSP BIOTECH DATED 18/12/2020). 5. Not only this, both husband and wife (accused No.1 & 2) did not stop only here, they Sanjay Dahiya and Savita Dahiya together got opened a fake current account M/s GSP BIOTECH in Canara Bank, Sector 25 in Panchkula in the name of Savita Dahiya. That they are not giving me any accounts of the money earned by using the machinery and resources of the dissolved firm and are earning profits by causing loss to me. Therefore, very clearly while committing fraud Savita Dahiya has while making a forged proprietorship firm in the name of M/s GSP Biotech opened an bank account in March, 2021 in the name of M/s. GSP Biotech (Proprietor) Current Account No. 3110201009833 in Canara Bank, Sector 25, Panchkula. Whereas the M/s. GSP Biotech (Prop) of Savita Dahiya's neither has any GST number nor transact any business nor files any GGST return. She only takes all cheques/bank transfers of business bills of M/s GSP BIOTECH (Partnership) in this account. Whereas M/s GSP BIOTECH (Partnership) was having drug license. Only that firm was doing business of drug testing report, which is now a dissolved firm and because of absence of partition and accounts settlement, no partner has right to run this after 16.01.2021. But Sanjay Dahiya and his wife Savita Dahiya are illegally running that. Whereas, his wife Savita Dahiya is taking the payment of that in her Canara Bank false account and causing huge financial loss to me. (SEE ANNEXURE 5 COPY OF CHECK OF CANARA BANK/M/s GSP BIOTECH/ SAVITA DAHIYA proprietorship) 6. I am having half share in whichever is the machinery in M/s GSP BIOTECH (Partnership). Because till today Sanjay Dahiya and Savita Dahiya has not finalized with regard to that property and machinery with me. That all machinery is in the *possession of Sanjay Dahiya and Savita Dahiya in illegal manner. Whereas, I am having half liability in the loan taken by M/s. GSP Biotech from UCO Bank. And now the bank is asking money from me. Sanjay Dahiya and Savita Dahiya are doing business while using that property machinery in illegal manner and have done the business of more than 1 crore and all the money of that Savita Dahiya and Sanjay Dahiya are taking in their respective forged and illegal account, whereas, regular payment of installments of business loan of Rs.50 Lakhs taken from UCO Bank by M/s. GSP Biotech was no done. Whereas, Sanjay Dahiya and Savita Dahiya while doing the business in the name of M/s. GSP Biotech are using the whole of the amount for their personal use while committing fraud. 7. In October, 2019 I have taken LAP loan of Rs.60 Lakhs from IDFC First Bank that amount was also used in the M/s. GSP Biotech, Today, both husband and wife Sanjay Dahiya and Savita Dahiya while taking possession in an illegal manner of which are using for their personal gain, whereas, nothing has been given to me in exchange to that money and I am depositing the installment of that loan amount of Rs.75,000/- per month. Whereas, I am not having any good source of income. Due to which, today I at the age of 60 years is suffering financially and mentally and both husband and wife has thrown me in the mental and physical problems in an illegal and by committing fraud. 8. That Ruchi Jain wife of Sh. Padam Kumar Jain is equally accountable in running this illegal business and bank accounts by Savita Dahiya and Sanjay Dahiya, because she is the only responsible for day to day working of this business and she is fully supporting Sanjay Dahiya and Savita Dahiya. She was fully aware that M/s. GSP Biotech is a dissolved firm and the firm is doing work illegally and Sanjay Dahiya and Savita Dahiya are* *doing transaction through forged bank accounts. Due to the support of Ruchi Jain I am suffering loss of lakhs of rupees and are not getting the value of my property and due to this I am suffering loss of lakhs of rupees. 9. Therefore, it is requested to you that Savita Dahiya and Sanjay Dahiya strict legal action be taken against all the accused while conducting the deep investigation into embezzlement of my business property while making forged partnership deed in forged and fabricated manner and while transacting in the fake bank account in an illegal manner, causing financial loss to me with ill luck manner, committing distress, fraud, cheating, fake transaction of money through fake documents and of violating the right to property and helping in the crime and cheating by Ruchi Jain and saving the accused from legal action in illegal manner and tried to cause loss to the right to property and FIR be registered against all the accused and justice be done to me. Thanking You, Applicant Sd/- Gulvinder Sharma, Flat No. B34, Bhai Mati Dass Society, GH01, Sector 23, Panchkula, Haryana 134019. Mobile No. 819495079. xx"*

4. During the course of investigation, the statement of Mrs. Ruchi Jain was recorded under Section 161 Cr.P.C. and reads as under:-

"PS Chandimandir Commissionerate Panchkula

FIR no. 124 dated 04.04.2023, u/s 406, 420, 467, 468, 471, 120 of IPC, PS Chandimandir.

Statement of Ruchi Jain, wife of Sh. Netar Mani Painuwali, resident of Flat 4A, Guru Nanak Enclave, Dakholi, Zirakpur, Punjab, Statement w/s 161 Cr.P.C.

Stated that I am the resident of the aforementioned address and I have passed diploma course in pharmacy. I have an approved chemist license. That I had known Prince Kumar, who has also *passed pharmacy course from earlier. Who told me that there is a vacancy for the post of personal incharge in M/s GSP Biotech Firm situated at Plot no. 221, HSIIDC Factory Area, Alipur, Barwala, District Panchkula. The partner of the firm is Sh. Gulwinder Singh and Sanjay Dahiya. I visited the said firm and gave my interview. At that time, Gulwinder Singh had taken my interview. That after my interview, I was called in the firm in December, 2019, and I joined the post of personal incharge. That on dated 18.12.2019, the firm applied for the license in the Drug Department. That on 18.12.2019 itself, the firm gave an affidavit with my name to the Drug Department and they also took my signature on the said affidavit. The firm gave that affidavit to the Drug Department but it was not given from my side. Regarding this, only the firm has the information as to who prepared my affidavit and gave to the Drug Department. On 22.01.2020, the Department gave the license to the firm which had given me the authority being a personal incharge. Thereafter, the work of the firm started. Thereafter, a testing report was prepared in the firm which was prepared by me. At that time, approximately 7-8 employees were working in the firm. A person namely Prince Kumar was posted at the post of Manager and he used to oversee the day to day activities. On dated 10.08.2020, the behavior of Prince Kumar, Manager, was not good towards me and therefore I resigned from my post. That I sent my resignation letter though an email to the firm. When I resigned, at that time, both the partners were looking after the firm and they were fully aware about the affairs of the firm. Moreover, the partners of the firm have the responsibility to give this information to the Drug Department within a period of three months. They are responsible to give this information to the Drug*

Department that I have resigned from the post of personal incharge. When I was employed with the firm, the salary used to be credited by the firm in my account in Canara Bank. On 07.10.2021, upon asking of Sanjay Dahiya, partner of the firm, I came to Pune and joined the Pune Firm. When I rejoined the firm, at that time, Prince Kumar had left the post of Manager. When I rejoined the firm, then I came to know that at the time of raid conducted by the Drug Department, my signatures were forged on the testing report. The copies of the report were taken by the Drug Department. This raid was conducted by the Drug Department in April, 2022, and resultantly, the Drug Department suspended the license of the firm by sending a letter. Then the company was shut down. After I had rejoined the firm, at that time, the testing reports were prepared by me. On 10.08.2020, after I had given my resignation letter to M/s GSP Biotech, after that, on 11.08.2020, I had joined Aashirwad Analytical Services, Phase-1, Plot no. 263, Panchkula and I had left this job on 03.10.2021. After I had resigned from M/s GSP Firm, I have no knowledge regarding the signatures on the testing report. But the partners of the firm can tell regarding the same. Statement recorded and heard, which is correct.

Sd/-
SI Surjit Kumar
PS Chandimandir
Dated: 01.11.2023"

5. The learned counsels for the petitioners contend that the dispute between the complainant and the accused is purely civil in nature. As the complainant and the accused were partners, the appropriate remedy would be to invoke the provisions of the Partnership Act which had been availed as the complainant has filed a civil suit for

rendition of accounts in the Courts at Panchkula. All the allegations levelled against the accused by the complainant are pertaining to the period which starts after the complainant had served a notice for dissolution of the firm. Further, the State of Haryana through the Drug Controls Officer, Panchkula has filed a criminal complaint against the petitioners and therefore, there could not be two prosecutions for the same offences. As regards petitioner-Savita Dahiya, she had no role to play in the entire affair. As the petitioners were ready and willing to join investigation, they were entitled to the concession of anticipatory bail.

6. On the other hand, the learned State counsel while referring to the reply dated 21.09.2023 contends that the accused were preparing false and unfair test reports of medicines under the licence by issuing fake certificates to several manufacturers regarding the genuineness of their drugs and cosmetics including life-saving drugs by forging the signatures of the Person-in-charge Mrs. Ruchi Jain whose statement in that regard had been recorded under Section 161 Cr.P.C. The accused had continued to issue fake certificates and reports even after the cancellation of their drug licence i.e. 12.04.2022. The statement of the accounts of the petitioners were checked and one of the accounts with the AXIS Bank was found to have received an amount of Rs.27,09,569/- which had been transferred for issuance of fake reports/certificates. So far, 75 fake reports had been recovered from the accused issued by them. Many of the fake reports/certificates had been found to be issued during the period of the COVID-19 pandemic thereby committing an offence against the public at large. The custodial interrogation of the petitioners were certainly required to recover thousands of fake reports issued by

them. Even otherwise, from the evidence collected so far and the statement of Mrs. Ruchi Jain, the offence was *prima facie* established. As regards the proceedings under the Drugs and Cosmetics Act, those were distinct inasmuch as the question of forgery of documents and the fraud with the complainant were not a subject matter of that complaint. When the petitioner-Sanjay Dahiya (CRM-M-34185-2023) had visited the Police Station Chandimandir, he had misbehaved with the Police Officers with regard to the notice served upon him and had threatened them stating that he had links with higher officials and politicians. On account of the conduct of the petitioner-Sanjay Dahiya, DDR No.20 dated 21.06.2023 was registered against the petitioner. He, therefore, contends that the petitions for the grant of anticipatory bail were liable to be dismissed.

7. The learned counsel for the complainant while referring to the reply dated 15.08.2023 contends that the petitioner-Sanjay Dahiya had illegally introduced his wife in the firm as a partner thereby usurping the 50% share of the complainant which was not less than Rs.1.25 crores. Further bank accounts were opened in the name of the dissolved firm. The money illegally earned by preparing fake reports had been siphoned off by the petitioners in active connivance with each other in their respective personal accounts. Rs.27,95,569/- had been deposited in the account of the petitioner-Sanjay Dahiya and an amount of Rs.63,67,595/- had been deposited in the personal account of petitioner-Savita Dahiya (CRM-M-41134-2023). In view of the serious nature of the allegations of forgery of certificates and the consequent siphoning off a huge amount of money, the offence was *prima facie*

established and therefore, the petitioners were not entitled to the concession of anticipatory bail.

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

9. 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.***

10. An examination of the material available on record would show that the petitioners in connivance with each other firstly ousted the complainant and thereafter issued hundreds of fake certificates purportedly signed by Mrs. Ruchi Jain and received lakhs of rupees on that account. When petitioner-Sanjay Dahiya went to the Police Station, he misbehaved with the Investigating Officers leading to the registration of a DDR against him. Therefore, his conduct also leaves a lot to be desired.

11. In view of the fact that the offences stand *prima facie* established and the custodial interrogation of the petitioners is certainly needed to recover fake certificates and unearth the entire conspiracy, no

ground for the grant of anticipatory bail is made out. Therefore, the present petitions stand dismissed.

12. However, the observations made hereinabove are only for the purposes of deciding those bail petitions 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

20.01.2024
JITESH

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