

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CRM-M-43195-2021
2024:PHHC:031525

BALJINDER SINGH PETITIONER

Vs.
STATE OF HARYANA RESPONDENT

2. CRM-M-10090-2021
2024:PHHC:031576

BALJINDER SINGH PETITIONER

Vs.
STATE OF HARYANA RESPONDENT

Reserved on: 28.02.2024
Pronounced on: 05.03.2024

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Sahil Puri, Advocate, for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, as both of them have arisen out of the same proceedings.

2. In *CRM-M-43195-2021* filed under Section 438 CrPC, petitioner prays for grant of anticipatory bail in case FIR No.525 dated 11.10.2020 registered under Section 420/406 IPC at Police Station Sector 5, Panchkula; whereas in *CRM-M-10090-2023*, petitioner prays for quashing of order dated 30.09.2021 (Annexure P7) passed by Id. Chief Judicial Magistrate, Panchkula, whereby petitioner was declared proclaimed person in the aforesaid case.

3. FIR was lodged on the complaint of Manmeet Singh stating that

he was the Country Head-Business Operations Marketing (India) Sales of a Malaysia based textile firm namely 'Gulati's Exclusive Sdn. Dbh', operating its India office from Panchkula. He is responsible for sourcing new designs, vendors and taking care of timely exports. While selecting new vendors, he came in contact with Baljinder Singh (petitioner) in February 2012, who introduced himself as a trader of textile products assuring the quality thereof. A meeting was arranged with PAVITER Singh, Managing Director of the Company, when he was on visit to India and thereafter, they entered into a purchase proposal with the petitioner on 24.02.2012. After approval, an advance of ₹2 lakh was accepted and acknowledged by the petitioner. Petitioner visited Malaysia office on 04.07.2012 for finalization of the order and had meeting with Board of Directors, where he managed to persuade them by making such assurances, which he knew to be false. Ignorant of the dishonest and fraudulent intentions of the petitioner, MD PAVITER Singh advanced a sum of 4,13,000 Ringgit (equivalent to ₹75,02,125/- in Indian currency) as advance payment for purchase of goods. However, instead of complying with the assurances, petitioner absconded with the amount and could not be traced despite best possible efforts of the company, as he managed to run from one country to other. On the aforesaid complaint, FIR was registered.

IN CRM-M-10090-2023

4.1 According to the petitioner, he received first summons on 10.07.2020 to appear before Police Station, Sector 5, Panchkula. He reached there on 06.08.2020, but complainant did not appear on that day. Petitioner then moved bail application No.767 of 2020 seeking blanket anticipatory bail, but the same was dismissed by the Court of Ld. Additional Sessions Judge,

Panchkula with liberty to him to file fresh application after registration of the FIR vide order dated 01.09.2020. After registration of the FIR on 11.10.2020, petitioner moved second anticipatory bail application on 21.08.2021, in which arguments were heard on 28.09.2021 and the matter was reserved for orders on 04.10.2021 as per Annexure P6.

4.2 Petitioner contends that in the meantime, the Court of Id. CJM, Panchkula vide order dated 27.08.2021 issued proclamation, asking the petitioner to surrender before the Court on 30.09.2021. The serving constable was directed to affix the proclamation 30 days prior to the date fixed. However, neither proclamation was affixed in the village of the petitioner, which is at the distance of about 180 Km from the Court of Id. CJM, Panchkula, nor the proclamation was published in any local newspaper. The Court of Id. CJM did not even wait for pronouncement of the order of Id. ASJ on the bail application of the petitioner and declared the petitioner as proclaimed person on 30.09.2021.

4.3 Ld. counsel for the petitioner contends that the aforesaid order dated 30.09.2021 is in gross violation of Section 82 CrPC, as there is nothing to suggest that a period of 30 days was provided to the petitioner as mandatorily required under Section 82 of the CrPC and that the said order was passed in a very hasty manner, without even waiting of the order of the Id. ASJ, Panchkula on the bail application moved by the petitioner, in which arguments had already been heard.

5. Ld. State counsel has opposed the aforesaid petition by submitting that before issuing the proclamation under Section 82 CrPC, repeated warrants of arrest had been issued against the petitioner, who was avoiding the service and then, the proclamation was effected in accordance

with law.

6.1 Perusal of the paper-book would reveal that vide order dated 05.07.2021, warrant of arrest was issued for 19.07.2021. On 19.07.2020, warrants of arrested was again directed to be issued against the petitioner-Baljinder Singh for 03.08.2021 as it was projected before Id. CJM, Panchkula that after returning from Malaysia, petitioner had gone untraced. On 03.08.2021, as the warrant of arrest was received back unexecuted, fresh warrant of arrest was directed to be issued for 17.08.2021.

6.2 Perusal of the paper-book would reveal that two orders were passed by Id. CJM, Panchkula on 17.08.2021. By way of first order (*available at page No.44 of the paper-book*), fresh warrant of arrest was directed to be issued for 30.09.2021 and by way of second order passed on the same day i.e. 17.08.2021 (*available at page No.45 of the paper-book*), it was noted that warrant of arrest had been received back unexecuted and on an application moved for issuance of proclamation against the petitioner-Baljinder Singh, said proclamation was directed to be issued for 30.09.2021. It is not explained in the later order as to how the warrant of arrest issued earlier on 17.08.2021 was immediately received back as un-executed. None of order of Id. CJM reflects as to what was the report on any of warrants of arrest issued from time to time.

6.3 Not only above, perusal of the order dated 30.09.2021 would reveal that proclamation was received back executed and statement of serving constable was recorded in this regard. It was noted that mandatory period of more than 30 days had elapsed and so, the petitioner was declared proclaimed person, as he did not surrender. There is absolutely no mention in the order as to when proclamation had been effected. There is no mention in the order as

to whether the proclamation has been effected as per Section 82 CrPC, which requires that proclamation is required to be publicly read in some conspicuous place of the town or village, in which the concerned person ordinarily resides. Section 82 CrPC further requires that publication is to be affixed at some conspicuous part of the house or homestead in which the concerned person ordinarily resides; and to some conspicuous place of such town or village. Another copy is required to be affixed to some conspicuous part of the Court house. There is no mention in the impugned order dated 30.09.2021 that any of these requirements as mentioned in the Section 82 CrPC were complied.

6.4 Apart from above, perusal of the order dated 28.09.2021 (Annexure P6) passed by Id. Additional Sessions Judge, Panchkula in bail application No.1155 of 2021, would reveal that arguments on that day were heard in the petition seeking anticipatory bail moved by the petitioner-Baljinder Singh and the case was adjourned for pronouncement of orders on 04.10.2021. As it appears, at the time when Court of Id. CJM declared the petitioner as proclaimed person on 30.09.2021, he was not at all apprised by the respondent-State that bail petition of the petitioner was pending and that order in the same was to be pronounced on 04.10.2021.

7. In view of all the aforesaid circumstances, the impugned order dated 30.09.2021, whereby the petitioner was declared proclaimed person, cannot be sustained in the eyes of law. Hence, the said order is hereby quashed.

Accordingly, *CRM-M-10090-2023* is allowed.

IN CRM-43195-2021

8. Contention of Id. counsel for the petitioner is that petitioner was working for Paviter Singh, as an employee of the company in Malaysia on

payment of 1200 Ringgit per month. He has nothing to do with the alleged offence. Petitioner had come in contact with the daughter of the MD PAVITER Singh of the company in 2015. Due to their love affair, about which MD of the company came to know, petitioner has been made the victim. Ld. counsel contends further that PAVITER Singh used to obtain signatures of the petitioner on blank papers, while giving salary to him. As PAVITER Singh came to know about the affair of his daughter with the petitioner, the petitioner was shunted out of the job. Ld. counsel also pointed out that present FIR has been lodged in 2020 though the matter pertains to the year 2012. Ld. counsel contends that the entire transactions, as alleged in the FIR, are in the nature of a contract, which as per the allegations was not fulfilled by the petitioner and that remedy for failure to perform such a contract lies in the Civil Court by filing a suit for recovery. Ld. counsel further contends that petitioner is ready to join the investigation and so, in all the circumstances, he be allowed bail.

9.1 Strongly opposing the bail petition, ld. State counsel has drawn attention towards various documents as placed on file by the complainant, which would reveal that a purchase agreement was executed with the petitioner and Gulati's Exclusive SDN BHD on 24.02.2012 (*Copy of which is Annexure R3*). Further attention is drawn towards various payment receipts showing payment of ₹2 lakh to the petitioner on 24.02.2012 and then 75,000 Ringgit each on 09.07.2012, 15.07.2012, 01.08.2012 and 15.08.2012. Another amount of 70,000 Ringgit was paid on 01.09.2012 and 43,000 Ringgit on 10.09.2012.

9.2 Ld. State counsel further drawn attention towards the purchase order dated 09.07.2012 (*Annexure R4*) duly executed between Gulati's

Exclusive SDN BHD and the petitioner. Ld. State counsel contends that in the light of these documents, it does not lie in the mouth of the petitioner to contend that he was only an employee on payment of certain salary under PAVITER Singh, MD of the company.

9.3 Ld. State counsel further submits that after collecting the huge amount from the complainant-company, petitioner fled from Malaysia and could not be found despite search and it was in these circumstances that FIR was lodged and that he has been avoiding his arrest. Ld. State counsel further contends that criminal element is also involved in the matter, as since beginning, the assurances given by the petitioner to comply with the contractual obligations were with dishonest and fraudulent intention, as he did not want to fulfill the same. Despite receiving huge amount, he did not fulfill any of the assurance, showing the dishonest intention since beginning. Prayer is made for rejecting the petition.

10. I have considered submission of both the sides and perused the record.

11. Perusal of the petition would reveal contrary stands taken by the petitioner. He claims to be as an employee under Paviter Singh on payment of 1200 Ringgit per month and then claims that Paviter Singh Gulati used to obtain his signatures on blank papers while giving salary to him. He also alleges that MD of the company Paviter Singh had come to know about the affairs of the petitioner with his daughter and so, complainant managed some forged documents and filed the present complaint. It is not disclosed by the petitioner as to when & where his signatures were taken nor it is disclosed that in case his signatures on blank papers were being taken and some forged documents were prepared, why he did not take any action against Paviter

Singh at any point of time.

12. Annexures R3 to R5, placed on record by the complainant, would clearly indicate the agreements executed between the complainant-company and the petitioner and the huge amount paid to him as advance. The mere fact that petitioner did not fulfill any of the assurances, *prima facie* show his dishonest and fraudulent intention since beginning. No doubt that on first blush, the matter appears to be civil in nature, but a civil dispute also may contain the criminal element. The aggrieved person has the remedy to avail his remedy on both criminal as civil side. Only because civil remedy is available for a cause, cannot be a ground to plead that criminal law cannot be set in motion.

13. It will be out of place to mention that on 29.02.201, this Court had noticed the rival contentions raised by both the sides. Petitioner was relying upon certain documents (Annexure P3 to P7) - photographs and WhatsApp chat etc. to show his intimacy with the daughter of Paviter Singh, but at the same time, counsel appearing for the petitioner declined to make the statement at Bar regarding authenticity of these documents. On the other hand, it was alleged on behalf of the complainant that daughter of Paviter Singh was being blackmailed and pressurized/coerced by the petitioner to give statement in his favour. This Court had directed both the parties to get the daughter of Paviter Singh interact with this Court by Video Conferencing from abroad, if possible. However, none of the parties made compliance of the said order. In case, petitioner had any affair with the daughter of Paviter Singh and he was being victimized, he could have made the Court to interact with the daughter of PAVITER Singh, but he failed to do so, indicating the false stand taken by him to mislead the court.

14. Having regard to all the facts and circumstances as noted above, but without commenting anything further on merits of the case, this Court is not inclined to grant the benefit of anticipatory bail to the petitioner, as his custodial interrogation may be necessary to unearth the truth.

As such, *CRM-M-43195-2021* is hereby dismissed.

A photocopy of this order be placed on the file of other connected case.

05.03.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Whether reportable?

Yes

No