

2024:PHHC:112825



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

258

CRM-M-38599-2024 (O&M)  
Date of decision: 30.08.2024

Saraswati Devi ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Bhrigu Agnihotri, Advocate  
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

Mr. Siddharth Sanwaria, Advocate  
for the complainant.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case bearing FIR No. 0042 dated 12.03.2024, registered under Sections 406, 420 and 120-B of IPC at Police Station Division No. 6, Jalandhar.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the written complaint filed by the complainant Harvinder Sodhi alleging therein that accused Harbinder Kumar, who was acquainted with the complainant from the last many years, approached him in September, 2023 and told him that he along with the petitioner and her husband Ajit Bansal had given bid in an auction for scrap sales of assets of M/s Hema Engineering Industries for a sum of Rs. 6,35,00,000/- and had been successful bidder. An agreement was

2024:PHHC:112825



executed between them on 11.09.2023. He further told that the entire auction money was to be deposited by them on 12.09.2023 and they were in need of a sum of Rs. 1,75,00,000/-, which amount if unpaid, would amount to loss of earnest money of Rs. 1,59,50,000/- already deposited by them. He along with the present petitioner and her husband and co-accused Dinesh Kumar persuaded the complainant to invest an amount of Rs.1,75,00,000/- with them by saying that he would be fetching profit on the same. On being so induced, the complainant invested the aforementioned amount with the petitioner and co-accused. However, after purchasing the assets of M/s Hema Engineering Industries by way of an auction, which included its plants, machineries and other inventories, the petitioner and the co-accused paid only an amount of Rs.59,50,000/- to the complainant and neither returned the amount invested nor the profits derived thereupon. Rather, the complainant came to know that they had sold all the assets of the above named firm. On his insistence, the petitioner issued two cheques for Rs. 20,00,000/- and Rs. 1,80,50,000/- respectively, both of which were dishonoured due to insufficiency of funds. The petitioner and co-accused failed to comply with the terms and conditions of the agreement entered into between them and the petitioner with dishonest intention cheated him and caused him wrongful loss and by having wrongful gain, she defrauded the complainant. Hence, the complainant prayed for taking action against the petitioner and co-accused. Apprehending her arrest, the petitioner moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Jalandhar and vide order dated 04.07.2024, the petitioner was extended

2024:PHHC:112825



benefit of interim bail, subject to her joining the investigation within a period of 07 days. However, the petitioner failed to do so and, therefore, her bail application was dismissed, vide order dated 23.07.2024.

3. The present petition has been filed by the petitioner on the ground and it has been argued by her counsel that she has been falsely implicated in this case. In fact, she is the victim in the matter. As per terms of the agreement arrived at between the co-accused and complainant with her, it was co-accused Dinesh Kumar, who had to pick up the scrap from the premises of the M/s Hema Engineering Industries within the stipulated time but he failed to do so, thereby compelling the petitioner to pay extra amount of Rs. 18,00,000/- for extension of agreement. The scrap material was not sold according to the agreement. It was removed from the spot by co-accused Dinesh Kumar in connivance with accused Harbinder Kumar, who was incharge of the premises of M/s Hema Engineering Industries. The petitioner still paid an amount of Rs. 60,00,000/- to the complainant, despite the fact that most of the scrap material remained unsold. The dispute between the parties is of civil nature. There was no *malafide* on the part of the petitioner as she had issued two cheques in favour of the complainant. She has been unnecessarily harassed as two complaints under Section 138 of the Negotiable Instruments Act have also been filed by the complainant against her. Co-accused Vinod Bhatti, Harwinder Kumar and Ajit Bansal have since been extended benefit of pre-arrest bail. The case of the petitioner is at parity with the cases of the co-accused. She had already invoked the arbitration clause and has initiated proceedings under the provisions of Arbitration Act. Her custodial

2024:PHHC:112825



interrogation is not required. She is ready to join the investigation. She could not join the investigation in pursuance of order dated 04.07.2024, passed by the Court of learned Additional Sessions Judge, Jalandhar due to health issues and not due to any ill intention. She is ready to abide by the terms and conditions of bail to be imposed by this Court. Therefore, it is argued that the present petition deserves to be allowed.

4. Status report has been filed by the respondent-State. It is submitted therein and learned State counsel, assisted by learned counsel for the complainant, has argued that there are serious allegations against the petitioner. In fact, she is the main precipitator of the subject crime. An FIR bearing No. 673 dated 26.08.2024 had been registered under Sections 132, 352 and 351(2) of BNS, 2023 at Police Station Sahibabad, District Ghaziabad against the husband of the petitioner i.e. co-accused Ajit Bansal as he caused obstruction in performance of duty by the Investigating Officer when he had tried to join the petitioner in the same as on the above mentioned date. The allegations as mentioned in the FIR *prima facie* show that an organized crime racket was operated by the petitioner in connivance with her husband and other accomplices and in pursuance of their conspiracy, all of them have defrauded the complainant by extracting huge amount of money from him. The recovery of scrap material as well as the amount payable by the petitioner is to be effected, for which, custodial interrogation of the petitioner is required. Hence, it is argued that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

2024:PHHC:112825



6. A perusal of the material placed on record reveals that vide order dated 04.07.2024, passed by the learned Additional Sessions Judge, Jalandhar, the petitioner had been ordered to be released on interim bail by observing that dispute appeared to be of civil nature. Copy of order, passed by the said Court in favour of co-accused Vinod Bhatti, has been placed on record, a perusal of which reveals that a compromise has been effected between the complainant and co-accused Vinod Bhatti and it was on that account that his prayer for grant of pre-arrest bail had been allowed. Co-accused Harwinder Kumar has also been extended benefit of pre-arrest bail due to the reason that he was only a mediator between the parties and was not alleged to have made any gains. Co-accused Ajit Bansal, who is the husband of the petitioner, had also been extended benefit of anticipatory bail, vide order dated 23.07.2024. Admittedly, out of the amount of Rs.1,75,00,000/-, an amount of Rs. 60,00,000/- stands returned by the petitioner to the complainant. With regard to amount of dishonoured cheques, complaints filed by the complainant are pending against the petitioner.

7. It is debatable question as to whether there was any dishonest inducement on the part of the petitioner against the complainant to deliver the aforementioned amount for the purpose of investment of the same and the ingredients of Section 420 of IPC have been attracted in the matter or not. It is also to be taken into consideration that the offence under Section 406 of IPC is antithesis to the offence under Section 406 of IPC. The well settled proposition of law is that criminal proceedings are not for realization of disputed dues. Though, no doubt, it is open for a Court to grant or refuse the

2024:PHHC:112825



prayer of grant of anticipatory bail depending on the facts and circumstances of the particular case, however, the Court is not expected to act as a recovery agent to realize the dues of the complainant and that too without any trial. Reliance in this regard can be placed upon ***Dilip Singh vs. State of Madhya Pradesh : (2021) 2 SCC 779*** and ***Ramesh Kumar vs. State of NCT Delhi, SLP(Cri.) No. 2358 of 2023***, decided on 04.07.2023.

8. The allegations in the FIR being taken on the face value disclose making investment of a sum of Rs.1,75,00,000/- by the complainant jointly with the petitioner and co-accused for the purpose of securing purchase of plant machinery etc. of M/s Hema Engineering Industries. The nature of the dispute between the parties *prima facie* appears to be predominantly civil in nature. There is nothing on record to show that there are chances of the petitioner's absconding, if extended benefit of anticipatory bail. Rather, she is willing to join the investigation and abide by the terms and conditions to be imposed by this Court. The complainant has already filed complaints under the Negotiable Instruments Act as mentioned above. If at all, the offences alleged against the petitioner are proved resulting into her conviction, she would be bound to suffer the penal consequences. In such circumstances, I am of the considered opinion that the custodial interrogation of the petitioner is not required. So far as the lodging of FIR No. 673 against co-accused Ajit Bansal is concerned, it is not the allegation that the petitioner had any role in the said occurrence.

9. Accordingly, without making any comment on the merits of the case, the present petition is allowed and the petitioner is granted concession of

2024:PHHC:112825



anticipatory bail subject to the condition that she would surrender before the Investigating Officer within a period of ten days from today and in that eventuality, the Investigating Officer/Arresting Officer shall release her on bail, on her furnishing personal/surety bonds to his/her satisfaction. This order shall also be subject to the following conditions:-

- (i) The petitioner shall cooperate with the investigation and shall appear before the Investigating Officer as and when required.
- (ii) She shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer.
- (iii) She shall not commit any similar offence while on bail.

10. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

30.08.2024  
*Waseem Ansari*

(MANISHA BATRA)  
JUDGE

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |