



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

107

CRM-M-39814-2024

DATE OF DECISION: 14.08.2024

KAMALJEET SINGH SAINI @ KAMALJIT SINGH  
...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gurcharan Dass, Advocate for the petitioner(s).  
Mr. Rajiv Verma, DAG, Punjab.

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SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 482 of The Bharatiya Nagarik Suraksha Sanhita, 2023 has been invoked seeking the concession for the grant of anticipatory bail to the petitioner in FIR No.80 dated 15.06.2024, under Sections 406/420 IPC, 1860 registered at Police Station Dakha, District Ludhiana (Rural).

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

*'Application no. 07-PC-03 dated 11.06.2024 and PGD-357819, the subject of which is as under:- To the SHO Dakha, Ludhiana, Dear Sir, I Inder Mohan Jain, Director of C Mohan Knitters Pvt. Ltd. hereby inform you that our registered address is backside E-11/1123. Village Karabara, Bahadur Ke road, and factory address is Hambran Industrial Zone, Hambran Chak Road, Ludhiana and during the time our imported machinery was delivered at factory. Amended GST certificate of factory*



*address also attached for your reference. Thanks and regards For C Mohan Knitters Pvt. Ltd. Director which was inquired into by DSP Dakha who sent his enquiry report to Senior Superintendent of Police, Ludhiana (Rural), the subject of which is as under: "To Senior Superintendent of Police, Ludhiana (Rural) no. 829 5-A/D SP Dakha dated 05.06.2024 subject report regarding application no. PGD no. 357819 dated 30.05.2024. Sir, name of applicant and address:- Inder Mohan Jain, Director of C Mohan Knitters Pvt. Ltd. Name and addresses of opposite party Kamaljeet Singh Saini son of Bahadur Singh, resident of Golden Avenue, Hambran road, Ludhiana. Allegations levelled regarding cheating by supplying machines of some others company after settling the deal for giving machines meant for dying of Fongs company. Regarding the allegations levelled earlier: no, detail of enquiry held:- no. Witnesses/proof produced by the applicant party:- documents of company, copies of bills, pen drive and photographs. Details of others documents came during the enquiry conducted by the Enquiry Officer:- No. Parawise report regarding the allegations levelled by the applicant:- The aforesaid PGD numbered application has reached me in peshi after enquiry by SHO PS Dakha according to which, from the secret and open enquiry statement recorded and documents produced, it has been revealed that applicant Inder Mohan Jain aforesaid who is doing business of manufacturing of clothes and its sale and who has installed his new factory at village Chak Kalan on Hambran Road to village Chak Kalan Road. Applicant Inder Mohan Jain has good business relations since long with Kamaljeet Saini son of Bahadur Singh resident of house no. 39, Golden Avenue Hambran Road, Ludhiana due to which it is possible that he is having knowledge about the work and factories of the applicant. In the month of August 2022, Kamaljeet Saini told the applicant about his business relations with the company manufacturing the machines dying the clothes at China and stated that if he is in*



*need, he will get arranged for him the old dying machines which will be in new condition at cheaper rate. Due to this, the applicant was enticed to the talk of Kamaljeet Saini and told him to get arranged 3 machines of 250 Kilo model 2015, at 90,000/- USD i.e. 30,000 USD per machine from one Chinese company Qingdao Haizhenngxin Dyeing & Finishing Equipment Coh. Ltd. no. 312 Changhun Road, Shuangbu Industrial park, Liutin, Chengyang District, Qingdao, Shandong Province China. Before the deal was settled, Kamaljit Saini assured the applicant that it will be his whole responsibility regarding the deals and machines. As per the statement of applicant, he had told Kamaljeet Saini to take machines of Fongs Company regarding which Kamaljeet Singh Saini had taken the whole responsibility. Upon this, in the last week of August 2022. The applicant paid to Kamaljeet Saini aforesaid about 90,000 USD in cash and on the asking of Kamaljit Saini remaining 72,000 USD were transferred in the main of aforesaid company on 30.09.2022 in account no. 37150198651000002838 China Construction Bank Corporation, Qingdo Branch Licang Sub Branch. Upon this the aforesaid company issued one certified bills regarding purchase of three second hand reconditions Fongs dying machines ECO-6-IT 250 KG and delivered the shipment of the aforesaid machines on 09.02.2023. Regarding this the applicant had produced copy of invoice issued by the company. As per statement on reaching the aforesaid machines in the factory, the applicant came to know that the machines asked for by him where not of Fongs company nor was there any mark of Fongs company upon them. Rather the machines were in a very bad condition and the same were having joints of welding at many places. Had these been operated after being installed, these could burst and could cause a huge physical and financial loss. When the applicant had a talk regarding this with Kamaljit Saini he did not give him any satisfactory reply rather evaded the matter saying that at the earliest he will talk to the aforesaid*



*company. The applicant had paid total 90,000 USD to Kamaljit Saini for the purchase of machine of Fongs company but the machine which he got provided, their market rate is about 25,000 USD. As told by applicant Inder Mohan Jain, and after hearing the talk with Kamaljeet Saini aforesaid, it is clear that there had been a talk earlier also with respondent Kamaljit Saini aforesaid regarding purchasing the machine. Besides this, during enquiry, the applicant has produced a hand written writing on which Kamaljit Saini put his signature on 14.09.2022 and has given the rate of machine in writing of different capacity. Then as per oral promise, have not brought the machine of Fongs company whereas the logo of some other company has been marked. From the enquiry conducted till now it has been revealed that Kamaljit Saini is doing the business of sale purchase of the aforesaid machines who enticed applicant Inder Mohan Jain in his talk and has given three dying machine from China. When reached the factory, the aforesaid machines are not of Fongs company. Kamaljit Saini aforesaid has received commission of 18,000 USD and has got machines at cheaper rate from some other company, prima facie offences under section 406, 420 IPC are made out. Action which has been recommended:- Agreeing with the report of SHO PS Dakha, order may be passed for registration of FIR against Kamaljeet Saini aforesaid and for investigation. Report is submitted. Sd/- Deputy Superintendent of Police, Sub Division Dakha. On this Worthy SSP Ludhiana Rural has written SHO Dakha Register the case & investigate Sd/- Senior Superintendent of Police Ludhiana (Rural) dated 15.06.2024. On this, the applications alongwith enquiry report having been received today in police station, FIR under the aforesaid offence against Kamaljeet Saini aforesaid is being registered. The record is being got completed. After completion, FIR alongwith original application and enquiry report (page no. 1 to 144) alongwith copy of FIR is*



*being handed over to ASI Taresm Singh no. 246 for investigation. DCR is being informed through wireless.'*

### 3. Contentions

#### On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and the dispute is of civil in nature and is being given a criminal colour by the complainant. The entire dispute is pertaining to a contractual obligation and no criminal liability can be fastened upon him.

#### On behalf of the State

Learned State Counsel appearing on advance notice on instructions from ASI Surender Singh opposes the prayer for grant of anticipatory bail. He would contend that there is essence of cheating as he charged 90,000 US Dollar for bringing the certain machines from China from a specific company but he supplied old machines, therefore, did not fulfil his promise and it is on that account dismissal of the petition is sought for.

### 4. Analysis

Be that as it may, having considered the aforesaid factual aspects leading to the registration of the instant FIR, admittedly it was only a contractual obligation and a promise which may not have been fulfilled but the essence of cheating prima facie could not be made out as no written contract between the parties has been put forth either by the Investigating Agency or by the complainant yet, to believe the assertion as made in the instatn FIR. It is not a case where custodial interrogation is required since machines have been supplied against money received by



the petitioner and the remaining dispute as per the allegations in the complaint are that the promise was to supply new machines from one company of China and the same can be adjudicated only in the due course of the trial by leading evidence. Hence, this Court finds no reason to deny the petitioner the concession of anticipatory bail wherein the petitioner has bona fide intentions and is willing to join the investigation and cooperate for furtherance of the same so that the final report can be submitted by the Investigating Agency in time.

5. **Decision**

Hence, in view of the admitted set of circumstances before this Court, the petitioner is hereby directed to be released on anticipatory bail subject to his joining investigation and reporting to the Investigating Officer concerned within a period of one week from today, on furnishing of personal/surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioner shall also abide by the terms and conditions as envisaged under Section 482(2) of BNSS of which are reproduced below :-

*‘When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-*

*(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*

*(ii) a condition that the person 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 from disclosing such facts to the Court or to any police officer;*

- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.'

However, it is made clear that in case the petitioner does not comply with the aforesaid direction of joining the investigation within one week, the order passed by this Court today shall automatically stands cancelled.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)  
JUDGE

14.08.2024  
anuradha

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