HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CRM-M-44030-2023 (O&M)

Decided on 05.07.2024

****

Deepak Batta ... Petitioner

VS.

State of Haryana & Ors. ... Respondents

****

CRM-M-5192-2024

****

Manjeet ... Petitioner

VS.

State of Haryana & Anr. ... Respondents

****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

****

Present: Mr. Keshav Pratap Singh, Advocate and
Mr. Amardeep Hooda, Advocate for the petitioner

Mr. SS Pannu, DAG Haryana

Ms. Promila Nain, Sr.Panel Counsel, UOI

****

Sandeep Moudgil, J.

(1). This order shall dispose of the above-cited two criminal miscellaneous petitions wherein the petitioners are seeking pre-arrest bail in a common FIR and therefore, these petitions are being taken up together. For the sake of order, CRM-M-44030-2023 is treated as the lead case.

(2). This is a petition under Section 438 CrPC filed by the petitioner with a prayer to grant anticipatory bail in case FIR No. 01 dated 12.01.2023 (Crime Case No. 1 dated 12.01.2023) under Sections 3 and 4 of Railway Property (Unlawful Possession) Act, 1966 (in short, the Act) registered at Police Station RPF, Rohtak, lodged subsequent to initial FIR No. 18 dated

11.01.2023, under Sections 380 and 457 IPC registered at Police Station Meham, District Rohtak.

(3). The brief facts of the case are that initially an FIR No.18 dated 11.01.2023 was registered at Police Station Meham, Rohtak by Nirmal Kumar Ben working as Senior Section Engineer, Railway Line, Delhi in Railway Department Sarai Rohilla (Construction) under Deputy Chief Engineer Tilak Bridge wherein it was stated that the material being used for construction of Railway Line has been stolen from the store established near the work site i.e. Bhaini Mahrajpur and during investigation carried by the Meham Police, three accused persons were arrested and the police recovered from their possession almost all the alleged stolen property stated in the FIR. Resultantly, since the matter pertained to theft of Railway property, FIR No.1 dated 12.01.2023 (Crime Case No. 1 dated 12.01.2023) came to be registered by the Railway Police and the case property was got transferred from the Meham Police Station to the Railway Police.

(4). Learned counsel for the petitioner contends that the petitioner was neither named in the FIR nor the allegations levelled by the complainant connected him with the offence of committing theft of railway property. In fact, from the allegations levelled by the complainant, it was evident that the employees of the railways as well as their contractors and their staff were involved in the commission of the crime and the burden was shifted illegally on other accused. He further contends that the petitioner has no concern nor did he conspire to commit the theft of the railway property and he is not even the member of the Whatsapp group allegedly involved in the stealing of the Railway property. He asserted that the petitioner is a partner with Firm M/s

Mahadev Steel Industries, Mandi Gobindgarh, Punjab, which was trading in all types of iron and steel scrap and as such he is also Income tax payee.

(5). It is argued that it is solely on the basis of disclosure suffered by one Sagar Taneja that the petitioner was arrayed as an accused in the present case. To show his bona fide, learned counsel for the petitioner referred to the tax invoice, E-way bill and bilty bill (Annexures P-7 to P-9) to show that he had bonafidely purchased MS iron scrap, the quantity of which was 12235 kilogram for a valuable consideration of Rs.5,77,4982/- on 18.12.2022 from Saurabh Enterprises through a broker, namely, Puneet @ Sonu and this transaction is depicted in the account of the Firm (Annexure P-10) and in this regard, he petitioner's firm had paid the due amount through RTGS and thereafter, the said items/articles were sold to MS iron scrap to Shree Ganesh Alloys on 19.12.2022 vide tax invoice No. 1575 (Annexure P-2) which is duly shown in the sale register (Annexure P-20) and account statement (Annexure P-22).

(6). Further it is asserted that the police had raided the premises of M/s Shree Ganesh Alloys on 16.02.2023 and had made various recoveries from there and the statement of Sanjeev Gupta active partner of M/s Shree Ganesh Alloys had already been recorded and even, Sanjeev Gupta, in his statement (Annexure P-23) did not have knowledge as to whether the property belonged to the railways or not and thus, the petitioner has been wrongly involved only on the basis of the suspicion whereas there is no material evidence to connect the petitioner in the commission of the theft/offence.

(7). On the other hand, learned State counsel has vehemently opposed the prayer made by the learned counsel for the petitioner and submits that during the course of investigation, it has emerged that the petitioner was found involved in aiding the disposal of stolen Railway property worth Rs.3,96,59,870/- of which stolen properties worth Rs.67,000,00/- has already been recovered and Railway properties worth Rs.3,33,00,000/- are yet to be recovered.

(8). Ms. Promila Nain, learned Senior Panel Counsel, UOI also averred that accused Mahakal was arrested and his Whatsapp chats were recovered and taken in police possession and from the Whatsapp conversation of the above mentioned accused, the name of the present petitioner has surfaced and he has been found to be the kingpin in disposing of the stolen Railway properties. She further averred that Railway properties in melted form as well as in original forms were recovered from Shri Ganesh Industry and the vehicle put in use for the purpose of transporting the stolen Railway properties/items were arranged by New India Roadways as is evident from the documents recovered by the Police from the firm of the petitioner, namely, Mahadev Steel Industries.

(9). It is vehemently argued that Railway properties had been stolen from various signal stores and on the basis of disclosure made by Sandeep scrap-dealer, Vijay Ram Railway Contractor and Suresh @ Bhura who was the watchman of the store, till today, 27 accused persons have been arrested and in order to unearth the whole scam and participation of the petitioner in transporting, disposing the stolen railway property, his custodial interrogation is utmost required, for there is sufficient, cogent and trustworthy evidence, collected by the prosecution against the petitioner which clearly indicates his active involvement and participation.

(10). As per the status report filed by EO/Inspector/RPF (*at page 156 of the paper-book*), it has been reported that that as per disclosure statement of Sagar Taneja and the whatsapp chat recovered from his mobile phone, the name of the present petitioner, namely, Deepak Batta has come to fore and it has also been found that the petitioner was in direct touch with main accused Sagar Taneja and thus played vital role to dispose of the stolen Railway properties.

(11). In fact fake documents i.e. E-way bill, Bilty, invoice, weighbridge slip, which were issued in the name of firm Saurabh Ji Enterprises Delhi and Chauhan Engineering works Delhi, were recovered which shows that the petitioner was fully aware that the articles which is purchasing are stolen Railway properties. That apart, the accounts in which the funds were transferred are also found to be fake. Surprisingly, fake firm Saurabh ji Enterprises was established by Neeraj, Vipin @ Dhiru, Sachin Kumar Sahu and Ashish by luring poor person Mohamad Sahil S/o Mohamad Naeem, r/o Village Basantpur, Majradeen Nagar, Hardoi UP in which money was transferred by the petitioner (owner of Madhav Steel Industries) and the petitioner and other co-accused persons are operating as a gang active in Delhi and UP for the purpose of opening fake bank accounts and in this regard, FIR No.241 dated 06.07.2023 under Section 420 IPC has also been registered at Police Station Hardoi, Uttar Pradesh.

(12). The status report also depicts that 200 KGs of stolen Railway Properties were taken into possession from Shree Ganesh Alloys, Mandi Gobindgarh, Punjab which were lying in original form and transported to their premises on 19.12.2023 and 03.01.2023 in truck No. HR-46E-1961 apart from this the 164 Ingots weight approx 30 Ton made after melting the stolen property was also taken into possession on disclosure of Sanjeev Kumar. It has also been mentioned that 17 accused are still on the run and Railway properties worth Rs.3,33,18,8708/- is yet to be recovered. The status report also discloses the details of Railway properties recovered till date worth Rs.63,41,000/- out of which Railway Properties worth Rs.23,15,000/- has been recovered from the Shri Ganesh Alloys Mandi Govindgarh, Punjab – the firm to whom the petitioner sold the stolen properties. Besides, the status report also discloses the list of seized vehicles used in transportation of stolen property, mobile phone, laptops, DVR, fake documents/bills, fake firms, fake bank cheque books etc.

(13). As regards the co-accused, namely, Manjit, during investigation and search of his house coupled with the CCTV footage from his house, it has been found that the stolen Railway properties are loaded in truck No.HR-46E-1961 with fake e-way bills, way-bridge slip etc. of fake firm Saurabhji Enterprises, Delhi which is in the name of Labourer Sahil and sold it to petitioner's firm (Deepak Batta), namely, Madhav Steel Industries.

(14). It was also found that Rs.4,81,00,000 was transferred from HDFC Bank account of Madhav Steel to Yes Bank account of Saurabhji Enterprises which was found to be fake inasmuch as the particulars of Saurabhji Enterprises were verified from the bank and found that the same was in the name of Sahil s/o Mohammad Naim r/o District Hardoi, UP in whose account, the above-said amount was transferred and Sahil has no knowledge about any such account. Thereafter, during investigation, it was also found that the accused persons including the petitioner has misused the Aadhar card and PAN card of many persons from Hardoi in creating fake bank accounts and firms.

(15). Heard learned counsel for the parties and gone through the record.

(16). As can be gauged from the averments made in the petition and reply filed on behalf of the Union of India, initially an FIR No.18 dated 11.01.2023 was registered at Police Station Meham, District Rohtak (Annexure P1) and since the matter pertained to theft of Railway properties, the investigation was transferred from Meham to RPF Rohtak by the order of JMIC, Rohtak and ultimately FIR No.1 dated 12.01.2023 under Sections 3 & 4 of the Act was registered by the police of Police Station RPF Rohtak. During investigation, 27 accused persons, including Sandeep scrap-dealer, Vijay Ram Railway Contractor and Suresh @ Bhura who was the watchman of the store were arrested and stolen property worth Rs.40 lakhs was also recovered.

(17). Firstly, assuming that the firms with which the petitioner is associated or the accused persons are genuine, even then, for the purpose of purchasing or selling iron/stell articles etc., the process of inviting tender was not adhered to. The accused-petitioner failed to bring forth plea of a bona fide purchaser etc. That apart, the prosecution has carried out comprehensive investigation and found that firms and bank accounts have been opened by the accused persons including the petitioner in the name of poor labourer and gullible persons who are residents of remote area of Uttar Pradesh and were called by these goons who lured them took their Aadhar cards/PAN card etc. on the false pretext of providing them job and subsequently misused their Aadhar cards/PAN card etc. in making fake bank accounts and firms for illegal transactions running in crores of rupees. It has also come to light during investigation that the raiding party inspected the site and found that there are jhuggis of labourers where the firms are shown to have been based.

(18). Secondly, the overall conduct of the petitioner itself shows that they are actively operating in such illegal trade of stealing, selling/buying of Railway properties and it is their *modus operandi* to lure poor people to steal the Railway properties and to carry out financial transactions in fake bank accounts to avoid any penal liability which needs to be sternly dealt with. In fact, the act of stealing Railway properties running into crores of rupees is a loss not only to the Railways but the Public Exchequer, as a whole. The way this gang is operating and their *modus operandi* in executing the fake transaction and stealing of Railway properties needs a thorough probe and for that purpose the investigating agency must be given a free hand.

(19). Thirdly, the presumption of guilt under Section 3 of Act of 1966, cannot be rebutted till the Accused persons proved that they obtained that property legally and in this regard, the onus is on them to decide the same by a positive proof and not merely offering reasonable or probable explanation which can only be done by way of leading evidence before the trial court.

(20). Fourthly, it is noteworthy that in respect of an offence under Section 3(a) of the Act, the Prosecution is to prove that (1) the accused has been in possession of the Railway Property, (2) the Property so seized from the Accused is the Railway Property, and (3) the said Railway Property is reasonably suspected of having been stolen or obtained unlawfully. A perusal of the allegations leveled in the FIR would undoubtedly fulfill the above-said three basic ingredients which is sufficient to constitute the essence of offence against the petitioner and other accused persons inasmuch, Railway property worth Rs.3,33,18,870/- is yet to be recovered from the total Railway property worth Rs.3,96,59,870/-.

(21). Moreover, it is sufficient if the facts and circumstances disclose that the property is reasonably suspected of having been stolen and once it is established that it is the Railway property and it is reasonably suspected to have been stolen, the burden shifts upon the accused to show how he came into lawful possession of the same. That apart, the manner of commissioning of offence/theft by the petitioner in collusion with other accused persons and also whether the petitioner purchased the stolen Railway property, knowingly and aided the other accused persons to dispose of the same, demands custodial and thorough investigation which can only be done after their taking into custody. Also, since disputed questions of facts are involved in the instant case which are *prima facie* tilting towards the prosecution, this Court is not inclined to extend the concession of anticipatory bail to the petitioner in view of the facts and peculiar circumstances involved in the present case.

(22). For the reasons afore-mentioned, this petition is dismissed and the order dated 28.11.2023 granting interim bail to the petitioner passed by this Court is recalled.

05.07.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*