209 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-52674-2023
Date of Decision: 06.03.2024

Payal Bindal …Petitioner

vs.

State of Haryana and another …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Inderjeet Singh, Advocate
for the petitioner **(through VC).**

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

Mr. Abhinav Sood, Advocate with Mr. Nitesh Jhajhria, Advocate
for respondent No.2-HDFC.

***

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Section 438 of Cr.P.C., with a prayer to grant anticipatory bail to her in case FIR No.94 dated 06.04.2023, registered under Sections 406 and 420 (added lateron) of IPC, at Police Station, Sector-5, Panchkula.

2. The FIR in the present case was registered on the basis of the complaint submitted by Tejinder Kumar, Branch Manager of HDFC Bank and the same has been reproduced below:-

> "Sir, Complaint No. 1369 dated 21.10.2022 after approval came to registration of case. Copy of complaint is as under: HDFC BANK LIMTED SCO 52 SECTOR 11 DATE: 20-10-2022 To The senor suprrintendent of Police Panchkula (Haryana) Subject: Complaint against the accused person (s) for committing offence of criminal breach of trust criminal misappropriation of funds u/s-403, 406 and other provisions of the Indian Penal Code. Sir, The Complainant is

a Schedule Commercial Bank within the meaning of term 'Scheduled Bank' defined under section 2 (e) of the Reserve Bank of India Act, 1934 engaged in the business of banking and finance and incorporated under Companies Act 1956, having its Registered Office at HDFC Bank House, Senapati Bapat Marg, Lower Parel (West), Mumbai 400013 and it's branches/offices across all over India including branch office at HDFC Bank House, Plot No. 28, Industrial Area, Phase 1, Chandigarh which is relevant for the purposes of this complaint. That the present complaint is filed against The One 10 Mega Store through its proprietor Mrs. Payal Bindal who had opened a Current Savings account bearing no. 50200063701451 with the complainant bank at its branch office situated at SCO 52, Sector 11, Panchkula and making all transactions from the said account maintained at that branch. That it is submitted that the complainant bank has reported that during intervening night of 28 May 2022, due to a technical glitch in the banking system, the balance of certain customer accounts got wrongly calculated resulting in inflated balances in the accounts of the customers and allowing the customers to withdraw such amounts beyond their actual credit balances. There was no credit entry passed in the system for the same due to system glitch. The Information Technology (IT) team of the complainant bank also identified the inflated balance issue in the subject CASA account, post system patch upgrade on the night of May 28, 2022/ early morning of May 29, 2022. The incident was also reported to Reserve Bank of India (RBI) by the Complainant Bank and Bank has also taken necessary action/efforts to recover the amount from such customers, through physical visits and issuance of the notices to them. However, the accused person(s) named in this compliant has dishonestly and with malafide intentions immediately transferred the inflated amount (credit) erroneously done in his/their account (s) during that time, to make unlawful gain. The subsequent debit entries reflected in the books of account of the accused person(s) brings forth an inevitable conclusion of account balance of the accused person having been inadvertently inflated by the bank due to system glitches and further signifies proves beyond any doubt, dishonest misappropriation of bank's funds by the accused person by effecting transfer of funds from the said account immediately. The act of transfer of credit itself signifies the criminal intent of the accused person(s). That the complainant bank on coming to know about the inadvertent balance inflation in the subject account, put the accused person(s) / account holder (s) on notice stating that inadvertent inflated balance in their account belongs to the complainant bank and their possession over it is akin to a possession in trust for bank under Section- 70, 71 72 of the Indian Contract Act, 1872. That in the present complaint also, the accused person(s) has/have already been called upon by way of a notice of demand and also asked the accused customer to discharge trust by making payment of the sum of Rs. 41,39,631.94/-, of the inadvertent balance inflation in their account. However, despite issuance of the said notice, accused person(s) has/have failed to act in terms thereof amounting to breach of trust and criminal intent to misappropriate the public funds deposited in the Bank. The accused persons are also not contactable over their mobile/contact numbers nor are available at their addresses. That it is most humbly prayed that the act of effecting transfer of the inadvertent balance inflation having been effected in the subject account of the accused person(s), knowing fully well that the money doesn't belong to the accused, satisfies all the ingredients of criminal misappropriation and further not having discharged the trust by making payment of the said amount back to the complainant bank, further satisfies all the ingredients of the criminal breach of trust under section-406 of Indian Penal Code, 1860. That the CASA account of the accused person(s), wherein balance has been inadvertently inflated and other banking transactions carried out by the accused person (s) is being maintain at the branch office SCO 52, Sector 11, Panchkula, within the jurisdiction of this police station, as such this police station will have The jurisdiction To register an FIR, investigate and deal with the complaint in accordance with law In the given facts and circumstances, you good offices are requested to register an FIR investigate the matter, and bring the accused person(s) to book in accordance with law. The complainant undertakes to render all assistance as and when required Details of the Accused Person(s) 1. Name The One 10 Mega Store through its Proprietor Mrs. Payal Bindal, 2.Address: C/o The One 10 Mega Store, H.No. 323 B-1, Shiv Colony, Pinjore, Panchkula- 134102, 3.Contact No./Mobile No: 9888188555, 4. CASA Account No: 50200063701451 Annexures 1. Account Opening form (Copy) of Accused, 2. KYC Documents of the accused.3. Statement of account showing details of debit entries Complainant HDFC Bank LTD. Sd Tejinder (Branch Manager) CC SHO Police Station Panchkula 9988615729."

3. Learned counsel for the petitioner contends that the petitioner is a house wife and has studied upto 10th standard. He further submits that three stores were being run in her name showing her to be a proprietor of the stores, whereas, all the stores were managed by other family members. He further contends that the FIR has been got registered by the complainant after 11 months of the alleged incident and the amount was withdrawn from her account by her brother, who has now expired. He further contends that the petitioner was ready to settle the dispute with the Bank and had offered to the Bank to sell the property owned by the present petitioner.

4. On the other hand, learned State counsel assisted by learned counsel for the complainant have vehemently opposed the submissions made by learned counsel for the petitioner. Learned counsel submit that due to a technical glitch in the system of the Bank, an amount of Rs.41,39,631.94/- was transferred in the account of the present petitioner. However, she fraudulently transferred an amount of Rs.24.50 lacs in the bank account of her husband

Sanjeev Kumar and also transferred an amount of Rs.10 lacs in the account of her son Shivam. Thereafter, the amounts were withdrawn 16 times from the ATM of the Bank. Learned counsel further submit that the matter was referred to the Mediation and Conciliation Centre of this Court, however, the petitioner did not co-operate during the mediation proceedings and even did not bother to appear before the Mediator, appointed by this Court.

5. I have heard learned counsel for the parties and perused the record.

6. The petitioner has been specifically named by the complainant in the present case and she, in connivance with other accused, has misappropriated an amount of Rs.41,39,631.94/- of the complainant-Bank. Apart from that, the present petitioner and other family members had withdrawn the amount illegally from the ATMs of the Bank. Still further, during the course of hearing on 17.10.2023, the petitioner had stated that she was ready to settle the dispute with the Bank by paying the whole amount. Consequently, the arrest of the petitioner was stayed, keeping in view the statement made by her before this Court. Thereafter, the matter remained pending for several months and ample opportunity was granted to the petitioner to settle the dispute with the Bank. However, the petitioner chose not to appear during the mediation proceedings and her conduct disentitles her to any equitable relief from this Court. Apart from that, the petitioner and her co-accused have misappropriated an amount of Rs.41,39,631.94/- of the complainant-Bank, which is public money and the present petition is ordered to be dismissed.

(N.S.SHEKHAWAT)
JUDGE

06.03.2024.
hemlata

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