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

CRM-M-46700-2024
DECIDED ON:19.09.2024

RAJESH KHANNA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 482 Bhartiya Nagrik Suraksha Sanhita, 2023, has been invoked seeking the concession for the grant of anticipatory bail to the petitioner in FIR No.298, dated 08.08.2024 under Sections 318(2), 316(2) of BNSS-2023 and Sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code (for short 'IPC') registered at Police Station Sirsa Sadar, District Sirsa.

2. Facts

The facts, in brief, are that the present FIR was registered on the complaint of Sanjay Jain son of Gyan Chand Jain, resident of Suratgaria Bazar Sirsa, in which he stated that that he is doing the work of Commission Agent under the name and style of M/s Sanjay Kumar & Com. for the last several years. The accused (applicant) who is the proprietor of the firm Shiv Traders approached the complainant with a proposal to start a Rice Mill in August 2022 and allured him that he will run the rice mill properly, at this, the complainant asked him that he has no knowledge about rice mill and he is doing the work of Commission Agent. At this, applicant said that he had been working with Vipin Singla in Singla industries for many years, due to which he has acquired all the knowledge of running the rice mill smoothly and assured the applicant that he will himself run the rice mill in every way and will handover the share of profit to the complainant, for every year. On the assurance of applicant, the complainant accepted his proposal for opening a rice mill and thereafter, the applicant introduced the complainant with the other accused in connection with the said rice mill and all the three accused under a well planned conspiracy caused financial and mental harm to the complainant and to unjustly enrich themselves kept contacting the complainant. Then applicant and complainant signed a partnership deed on 01.10.2022. After opening the rice mill it was agreed upon that the complainant shall look after the work of the market only and the applicant shall look after the work for buying, selling and manufacturing of the rice mill and accused no.2 will maintain the records of buying and selling of Rice and Paddy in the Mill and no good shall be imported or exported from the factory and without the signature/knowledge of accused no. 2 and accused No.3 would prepare profit and loss account and would also prepare the necessary tax statements for paying tax to the Government. Accused no.2 and 3 were employed in the factory by accused no 4. The accused took the complainant under false assurance and took his signature on some blank papers and upon blank cheques by saying that the complainant is partner of 60% share and his signature is required for smooth running of the mill and also obtained the password of the complainant's online bank account so that the accused no. 4 could do NEFT transaction etc. As per partnership deed, no partner should do anything against the firm or to cause damage to firm but in pursuance of their conspiracy all the accused persons signed the deed and took the complainant into their trust and thereby caused financial and mental injury to complainant. The accused no. 4 also started doing business in the name of Mahalakshmi Rice Mill and by keeping the complainant in the dark, all the accused persons started running business in the said mill but after sometime when the accused persons did not gave any account and the share of profit to complainant then the complainant demanded the entire record of Mahalakshmi Rice Mill from the accused persons, on which the accused persons lingered on the matter and did not give record to the complainant whereas according to partnership deed, any partner can inspect the account and record of the firm, but the accused persons to achieve their nefarious design did not handover or showed any record to the complainant and the complainant was kept away from all types of work in Mahalakshmi Rice mill. The complainant tried many times to claim his rights as per partnership deed and to see the work of Rice mill, but the said accused never provide any information to the complainant regarding the work being done inside the said rice mill. The returns or statements of Mahalakshmi Rice mill were prepared with the connivance of the said accused by keeping the complainant in the dark and same were signed by the accused no. 4 only. On the asking of accused no.4, the complainant purchased paddy till march 2023 from the market and sent the same to Mahalakshmi Rice mill and accused no. 4 assured the complainant that the rice mill was running well and they needed more goods and rice mill is not in loss. The accused no 4 has been running the firm Shiv traders Rania District Sirsa (under the name of accused No.1) for many years and accused no. 1 is sole proprietor of the same. The accused have shown that they have sold goods of Mahalakshmi Rice mill to above said firm and in this way they caused loss to Mahalakshmi rice mill and to complainant and kept sending all the goods to Shiv Traders. Total 82500 quantals of paddy and 28050 quantals of rice was purchased in Mahalakshmi rice mill. The full account of which was never given/handed over to the complainant despite his demand. In September 2023, the complainant was told by the accused no. I that the said rice mill was running in losses and a lot of payments in respect of "sale " Mahalakshmi rice mill had not been returned. When the complainant check all the records of Mahalakshmi Rice mill, then he got stunned to find that the accused persons in collusion with each other had sold about 33793.94 quantals of goods like rice and paddy of Mahalakshmi Rice Mill to their firm Shiv traders (Accused no.1) and 3368 quantal goods were shows purchased from Shiv Traders and neither any receipt nor any bill for the sold goods was shown on the firm's account, for which only a simple receipt and bill slip is present, which shows that the goods is being sold to accused no. 1. The accused persons in connivance with each other have embezzled the amount of Rs. 12 crores, which is still in their possession. When the complainant asked the accused persons about the said amount, they said that they had to embezzled and commit fraud with him and now he cannot do any harm to them and they have filed the income tax reluns and outer returns in collusion with accused No.3 and he cannot demand the record and money from them. Thereafter, the complainant with great difficulty somehow arranged the record of Mahalakshmi Rice mill and which revealed that goods were given to Shiv traders Rania by Mahalakshmi rice mill. On inquiring the matter at his own level, the complainant came to know that Shiv Traders Rania had purchased the goods from Mahalakshmi Rice mill and in this regard amount was embezzled by issuing some fake bill and a new rice mill namely Sun Light Rice Mill Ltd. Surtiya Road

Village Rori, was opened by embezzlement amount and the accused was embezzling the goods of Mahalakshmi Rice Mill by the help of Sun Light Rice mill and further embezzling the profit of complainant by showing Mahalakshmi Rice Mill in losses and also cheating with the Government by presenting the fake documents. When the complainant contacted with the accused no. 3 and asked him to provide the correct record regarding the said rice mill or to get the return filed properly then the accused no. 3 clearly refused the complainant and accused no. 4 removed his mobile phone number from the Website of government and registered the mobile number of complainant as part of their conspiracy. On the basis of above complaint, the FIR as registered against the accused persons.

3. Contentions

On behalf of the petitioner:

Learned counsel for the petitioner argues that the dispute between the parties is a purely of civil nature. In order to settle the accounts the petitioner has filed a civil suit for rendition of accounts before the Court below, wherein, notice was issued and is fixed for filing reply of defendant. The present case has been registered as a counter blast to the said civil suit.

Notice of motion.

On the asking of Court, Mr. Baljinder Singh Virk, Sr. DAG, Haryana accepts notice on behalf of respondent-State whereas, Mr. Aakash Singla, Advocate has put in appearance on behalf of complainant and filed his power of attorney, which is taken on record.

On behalf of the State as well as complainant:

Learned State Counsel assisted by the counsel for the complainant have opposed the prayer for grant of anticipatory bail to the petitioner stating that it is an admitted fact that the complainant signed a partnership deed on 01.10.2022, wherein, it was agreed that the complainant shall look after the work of the market only and the petitioner shall look after the work for buying, selling and manufacturing of the rice mill and the complainant has given a stock to petitioner for milling and selling it in the market but the petitioner has transferred it to Rania from Sirsa and has sold it in a different market without the permission and signature of the complainant. On that account, he alleges an offence of cheating and fraud committed upon the complainant.

4. ***Analysis***

Ater giving a thoughtful consideration to the submissions as made, by the counsel for the parties, this Court *prima*-facie finds it a case of contractual obligation and no criminal liability can be fastened upon the petitioner, hence no reason is made out 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 within the stipulated time period.

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 him joining the investigation and reporting to the Investigating Officer concerned within a period of 10 days from today, upon 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 10 days, the order passed by this Court today shall automatically, stand cancelled.

In the afore-said terms, the present petition stands allowed.

(SANDEEP MOUDGIL)
JUDGE

19.09.2024

Sham

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*