

**101+204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.53303 of 2023 (O&M)

Date of decision : 09.01.2024.

Abhishek @ Abhishek Garg

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Gautam Dutt, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

Mr. Karan S.Rana, Advocate for the complainant.

PANKAJ JAIN, J. (ORAL)

1 The petitioner has prayed for grant of pre-arrest bail in FIR No.0684 dated 18.09.2023 under Sections 420 and 406 of IPC registered at Police Station Kundli, District Sonapat.

2 While issuing notice of motion on 20.10.2023, the following order was passed:-

“Petitioner prays for pre-arrest bail in FIR No.0684 dated 18.09.2023, registered for offences punishable under Sections 420 and 406 of IPC at Police Station Kundli, District Sonipat by way of present petition under Section 438 Cr.P.C. apprehending his arrest.

The contents of the FIR read as under:-

"1) That I, complainant am permanent resident of said address and I am a law abiding and peace loving citizen. 2) That complainant's wife Poonam Chauhan s/o Rajiv Chauhan s/o Lal Singh Chauhan is running a firm in the name of M/s Kapalin Food Pvt Ltd. Gurgaon, in which she is partner with two other persons and its registration number is U15490HR2022PTC100541. Complainant is looking after the work of the company being authorized signatory on behalf of his

wife. 3) That the complainant in the name of company had imported three containers weighing 53.225 tons of walnut from Valbi Fruits Company, which is situated in Chile. The quality of goods which imported was 30- 34 (size). One container was purchased in the name of M/s Kapalin Food Pvt Ltd. and two containers were purchased in the name of Kunj Forgings Pvt. Ltd. and had stored the said material containing walnuts total weighing 53.225 tons of quality 30-34 (size) in cold store of Ambay Agro & Cold Storage Pvt. Ltd. on 06.12.2022 vide receipts No.9096, 9097 and on 09.12.2022 vide receipt No.9102 through Sanjay Enterprises. Accused No.1 and 2 are owners of said Ambay Agro & Cold Storage Pvt. Ltd., whereas accused No.3 is Manager and accused No.4 is Supervisor. Complainant enquired on phone about goods at the said cold store in Kundli, Narela on 03.01.2023 and then he visited the cold store on 04.01.2023, where accused No.3 and 4 told him that containers of his material containing 53.225 tons walnuts are not available in the cold store and same has been released. Thus, now the goods of complainant are not available in cold store. At this, complainant asked accused No.1 to 4 as why they gave his goods to some third person without his consent but they failed to give any satisfactory response and they flatly stated that goods of complainant have already been released, so do whatever complainant wants to do, leave the place, otherwise they will kill him. Upon which, complainant moved a complaint dated 04.01.2023 to the SHO P.S. Kundli, Sonapat but no proceeding was taken thereon. Thereafter, complainant again moved complaint to SHO P.S. Kundli, Sonapat bearing complaint No.50-5-D dated 02.02.2023 but no proceeding has been taken thereon till now. Sir, whenever I try to talk to said accused at their cold store, Kundli, they use to threaten to kill complainant by stating that complainant's goods i.e. walnut weighing 53.225 ton of quality 30-34 (size) Valbi Fruit has costs of about Rs.4-4.5 crore. 4) That accused No.1 to 6 in collusion with each other have forcibly usurped complainant's goods i.e. walnut weighing 53.225 ton of quality 30-34 (size) Valbi Fruit, which has costs of about Rs.4-4.5 crore and they by openly committing fraud upon complainant caused him loss. Now, said persons by denying complainant to supply his goods i.e. walnut of 53.225 ton and further, they are extending him threatening to kill. Therefore, it is respectfully prayed before you that appropriate legal proceeding may kindly be initiated against said accused and my goods be got delivered in me from said accused. It would be your great kindness. Dated: 01.04.2023 Complainant Sid/-

Rajiv Chauhan s/o Sh. Lal Singh Chauhan, zo House No.703-B/1, Gali No.12, near Hanuman Mandir, Ashok Vihar, Gurgaon, Haryana, presently residing at H.No.239, Sector 51, Gurgaon, mobile No. 9654998800. Note: Complaint is enclosed with copies of already moved complaints dated 04.01.2023 and 02.02.2023, bill of goods, receipts No.9096, 9097, 9102 of cold store. Aadhaar card No.977151112409,"

It has been contended by the counsel representing the petitioner that in fact there is a dispute between the complainant and his partner Bhavesh Tomer. The other partner used to supply goods to the firm of the petitioner. On the asking of said Bhavesh Tomer, the petitioner purchased wallnuts @ Rs.100 per kg. The goods were purchased against invoices and the gate pass issued by M/s. Ambay Agro & Cold Storage (P) Ltd. Thereafter, on 15.12.2022 to 21.12.2022, 1355 bags were supplied to the petitioner @ Rs.100 per kg and relevant invoices were issued by M/s. Kaplin Food Pvt. Ltd. which were lifted against the gate passes. Thus, the petitioner is a bonafide purchaser and cannot be an accused of cheating.

Per contra, counsel for the complainant submits that the invoices being relied upon by the petitioner are forged and fabricated documents and police during investigation has also found the same to be forged. The true cost of the material is yet to be recovered and thus the petitioner having lifted the goods owned by the complainant on the strength of forged and fabricated documents does not deserve concession of pre-arrest bail.

Mr. Bansal, State counsel has supported the contention raised by counsel for the complainant and submits that custodial interrogation of the petitioner is necessary.

Faced with the situation, counsel for the petitioner submits that it is a purely commercial transaction which has gone astray owing to differences inter se between the partners. In order to compensate the complainant, the petitioner is ready to deposit Rs.1 crore to show his bonafide. He further contends that the invoices and the other documents were taken on their face value by the petitioner as they were received from Bhavesh Tomer, one of the partners.

Notice of motion for 08.11.2023.

Mr. Gaurav Bansal, DAG, Haryana, accepts notice on behalf of the respondent-State. Mr. Karan Singh Rana, Advocate, accepts notice on behalf of the complainant.

Mr. Rana is allowed to file reply.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail on his furnishing personal and surety bonds to the satisfaction of the arresting officer/Investigating Officer, subject to him depositing Rs.1 crore on or before 30.10.2023 before this Court. The same shall be released to the complainant. As and when called, the petitioner shall join the investigation. He shall abide by the conditions enumerated under Section 438(2) of the Cr.P.C.”

3. Today, Learned State counsel on instructions from Insp. Rishi Kant has stated that pursuant to the order dated 20.10.2023, petitioner has joined investigation and is no longer required for custodial interrogation.

4. In view of above the interim order dated 20.10.2023 passed by this Court is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.

5. This order should not be treated as "blanket" order. It will not be read granting petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.

6. This order does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the petitioner.

7. The petitioner shall be deemed to be in custody for the purpose of Section 27 of the Evidence Act, 1872 in regard to a discovery of facts made in pursuance of information supplied by the petitioner in case the occasion arises.

8. It will be open to the police or the investigating agency to move this court for a direction under Section 439 (2) Cr.P.C. to arrest the accused, in the event of violation of any term, such as absconding, non-

cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.

- 9. Petition stands disposed off.
- 10. Needless to say that the deposit and release of amount of Rs.1 crore will be subject to the final result of the trial Court.
- 11. Pending applications if any, shall stand disposed off.

(PANKAJ JAIN)
JUDGE

09th January, 2024
spn

Whether speaking/reasoned	Yes
Whether Reportable :	No