IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-51125-2019 (O&M)
Date of decision: 14.02.2024

Himanshu Malik ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. D.S.Sobti, Advocate, for the petitioner.

Mr. Kiran Pal Singh, AAG., Haryana, for the respondent.

None for the complainant.

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MAHABIR SINGH SINDHU, J.

Present petition under Section 438 of the Code of Criminal Procedure has been filed for grant of pre-arrest bail to the petitioner in FIR No.242 dated 14.07.2019, under Sections 420, 409, 506 read with Section 34 of Indian Penal Code, 1860, registered at Police Station, Sector 17/18, District Gurugram.

(2) Above FIR was registered by Rajesh Khattri S/o Bihari Lal and the contents of the same reads as under:-

> *"To, The SHO Sec-18 Gurugram. Sub. Complaint U/s 420/409/506134 IPC. Saljan Singh R/o K-27 Chanakya Place Part-2,UTTAM NAGAR NEW Delhi. At Present-A-3/88 Janak Puri 3rd Floor N. Delhi. M-9810158804,8800484999. (2) Shiv malik S/o Late Sh. Nottan Dass Malik R/O W-2/8 Asalatpur Village Delhi Mobile No-9810087186 (3) Himanshu Malik S/o Shiv Malik R/o W-2/8 Asalatpur Village Delhi (4) Dharampal S/o Ram Kumar R/o 2925A Gali No-219 Vishram Nagar Tri Nagar, New Delhi Mobile No- 9250385210 (5) Gopal Krishan Solanki WZ - 743R Palam Gaon New Delhi Mobile No- 9810073768. Respected sir, 1. That the complainant is law abiding person and belongs to a very respectable, well recognized and reputed family of the society. (2) That the accused Sajjan Singh along with accused Dharampal And accused Shiv Malik approached the complainant in the year 2016*

through CHARNJEET ARORA. The accused person collectively requested that accused Sajjan Singh had been associated in the business of manufacturing and export of readymade garments and earned laurels in business field. They further requested that the company of accused Sajjan Singh had valid export/import related license, IEC code and business turnover of more that thousand crores of rupees in past. They further requested that accused Sajjan Singh and accused Dharampal are facing business crisis in their business and needed funds to keep the business revived. They induced the complainant on the pretext that if he would invest with their companies he would yield high profit. Upon persuasion accused Shiv Malik got the paper of parental property (residential home) of the complainant pledge before Canara Bank, Haily Mandi District Gurugram to procure the cast credit Limit. The accused Shiv Malik had his influence in the CANARA BANK (HIGHER AUTHORITIES) and therefore he succeeded to get cash credit limit of Rs 3 Crores. The complainant was not having any company in his name and accused persons got him impleaded as partner in two Firms namely Amair Pharma and Durga Trading Company which were already existing and managed by accused Shiv Malik and accused Dharampal. The accused persons pledge property of complainant before the bank and succeeded to get cast credit limit of Rs 1.5 cr. each for both firms, in this way the accused persons succeeded to achieve Rs 3 crores from the bank after pledging the property of the complainant. As an eye wash the accused also prepared MOU dated 8-11-16 and certain modalities were duly incorporated which eventuality turned out to be an eye wash. Also committed for 40 % share in both firms but shocked to see 20 % shares in partnership deed. It means accused have malafied intension from day one. That thereafter no profit/ money was ever given to the complainant and kept on showing the companies to be in losses. That the year 2018 complainant was shocked to observe that at the instance of sajjan Garg his brother in law Dharampal and Shiv Malik being the authorized signatory/ partner in Amaira Pharma transferred Rs 21 Lacs on 14-3-2017, Rs 33 Lacs on 6-7-2017, Rs.1.2 Lacs on 22.12.2017, and 2.3 Lacs on 29.12.2017 in Durga Trading Company, prior to that Sajjan Garg on 17.11.2016 transferred Rs 30. Lacs in this company namlely Krishna HP Gas, najafgarh delhi. That subsequently Sajjan Garg his brother in law Dharampal and Himanshu Malik being the authorized signatory/ partner in Durga trading availed 1.5 Crores CC limit by transferring them in the ten different companies . It is pertinent to mention that the entire transactions and the transfer of funds were done at the instance of Sajjan Garg by Dharampal and Himanshu Malik for exports of ready Made garments and accessories in the companies. (1) Rims International Bangalore Dated 9-12-16 Amount 20 lacs. (2) Internit Fashion Banglore dated 9-12-16 amount 10 Lacs (3) Munisha Export Banglore dated 09-12-16 amount 10 Lacs (4) Munisha Export Banglore dated 21-12-16 amount 20 Lacs (5) Vinagya Export

Banglore Dated 21.12.16 amount -20 Lacs (6) Ziava Handloom Barabanki dated 24.01.2017 amount 9 Lacs (7) New Zaiva Barabanki dated 2401.2017 amount 10 Lacs (8) Ziava (Handloom) Barabanki dated 25.01 2017 amount 9 Lacs (9) Ziava Handloom Barabanki dated 27.01.2017 amount 13 Lacs (10) New Zaiva Barabanki dated 27.01.2017 amount 12 Lacs. That accused Sajjan Garg, Dharampal, Shiv Malik and Himanshu Malik informed the complainant that the above stated companies have various business dealing with Seaon Overseas, Durga Apparels Pvt Ltd and Pavo Designs ltd companies owned and managed by Sajjan Garg, however they never informed the complaint or his brother regarding the ongoing business activities account transactions transfer of funds but always used to inform him that the garment export business was running in profit. That in January 2018 Complainant was Shocked to see notice for symbolic possession of his parental property HNO- 319 Sector-17A Measuring 420 Sq meter in the name of his fater Sh. Hazari lal. That it has also been brought to the knowledge of the complainant that all of them had the exclusive knowledge that they would not export the garments and accessories but despite this they induct the complainant to pledge his parental property documents and avail CC limit on it, which ultimately has been misappropriated by them. It has been also brought to the knowledge of the complainant that the transfer of fund from the CC limit was done with the sole objective to procure the fake inflated bills in the companies of Mr. Sajjan Garg and his other above stated associates. The real purchase or sale never took place and the money has been misappropriated, furthermore the books of account of Durga Trading Company and Amaira Pharma have been forged thereby explicitly meaning that Sajjan Garg his brother in law Dharampal, Shiv Malik, Himanshu malik have falsified the books of account with forged documents. It is also learned through Charanjeet Arora cousin of Shiv Malik was also looking after the accounts of Amira Pharma and also used to handle the day today affairs of the company. That accused Sajjan Singh is always escorted or accompanied by the private person namely Gopal Krishan Solanki. The complainant along with Charanjeet Arora visited the accused Sajjan 13.05.2019 at around 15:00 Hours. Accused Gopal Krishan pushed them out and intimidated them by pulling a pistol towards complainant and threatened of dire consequences upon subsequent visit. It is therefore requested to your good self to promptly registered FIR under Section 420/409/506/34 IPC and take immediate action against the accused."

(3) Learned counsel contends that petitioner was granted interim bail on 02.12.2019 and in pursuance thereof, he has joined investigation on many occasions; hence, his custodial interrogation is not required. Further contends that initially, in order to carry out the business of whole-sale medicines, a

partnership firm namely M/s Amairatales-Amaira Pharma came into existence on 19.05.2015 (P-4) between Shiv Malik and Charanjeet Arora; thereafter, on 25.10.2016 (P-5), Rajiv Khatri son of Hazari Lal (brother of complainant) and Rajesh Khatri son of Hazari Lal (complainant) were inducted as partners replacing Charanjeet Arora and taking over all existing assets and liabilities of the Firm. Similarly, Dharampal son of Ram Kumar was running the business of textile fabrics under the name & style of M/s Durga Trading Company since 2014 as a sole proprietor at New Delhi and thereafter, vide partnership deed dated 22.06.2016 (P-2), Shiv Kumar Malik and Rajiv Khatri were inducted as partners by taking over all existing assets and liabilities of the firm. Also contends that Memorandum of Undertakings (MOU) dated 08.11.2016 was executed between the parties, whereby it was decided that Rajesh Khatri-complainant will withdraw Rs.1 lakh per month less to his profit, but due to slow down in the market, both the firms suffered losses. It is specifically contended that complainant being the son of a retired IPS officer, just to pressurize the petitioner and to extract the money got the present FIR registered in connivance with the police. Again submitted that cash credit limit was obtained from the Canara Bank after mortgaging the original title deed of the property with free consent of the owner and there is no allegation of fraud or undue influence against any bank official to that effect; hence, the petitioner can not be held responsible for the business losses in any manner. Lastly submitted that it is purely a civil dispute, but has been given the colour of criminal case.

(4) On the other hand, learned State Counsel, on instructions from ASI-Naveen, although, acknowledged the factum of joining of investigation by

the petitioner, but opposes the prayer on the premise that his custodial interrogation is required for recovery of the money.

(5) Heard both sides and perused the paper-book.

(6) This Court while issuing notice of motion on 02.12.2019, granted interim bail to the petitioner and which reads as under:-

> *" Contends that main beneficiaries in the transaction are Sajjan Kumar and Shiv Malik, who have already been granted interim protection by this Court, vide orders dated 26.08.2019 (P-16) and 22.11.2019 (P-17).*
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> *Notice of motion for 18.12.2019.*
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> *In the meanwhile, the petitioner is directed to join the investigation before the Investigating Officer. In the event of his arrest, the Arresting Officer would admit him to interim bail in the present case till the next date of hearing on his furnishing adequate bail and surety bonds to his satisfaction. The petitioner is also directed to abide by all the conditions as envisaged under Section 438(2) Cr. P.C."*

(7) In pursuance of the above order, petitioner has joined investigation as and when called by the police. It is quite evident that complainant as well as his brother were inducted as partners in both the firms namely M/s Durga Trading Company and Amairatales-Amaira Pharma w.e.f. 22.06.2016 and 25.10.2016, respectively. It is not in dispute that at the time of availing cash credit limit, the original title deed of the property was mortgaged with the Canara Bank and there is no allegation against any bank official regarding any fraud or undue influence. In such a scenario, there is no justification to grant the custodial interrogation of the petitioner; rather, *prima facie* it appears to be a commercial dispute between the partners falling within the purview of Section 2(1)(c) of the Commercial Courts Act, 2015.

(8) Consequently, petition is allowed and interim order dated 02.12.2019 is made absolute subject to the conditions as envisaged under Section 438(2) Cr.P.C.

(9) It is also made clear that petitioner shall fully co-operate with the Investigating Officer as and when called for further investigation.

(10) The above observations may not be construed as an expression of opinion on merits of the case; rather confined only to decide the present bail matter.

(11) It is made clear that in case of misuse of concession by the petitioner, State of Haryana would be at liberty to move an appropriate application for recalling of this order.

(12) Disposed off accordingly.

(13) Pending application(s), if any, shall also stand disposed off.

14.02.2024 **(MAHABIR SINGH SINDHU)**
Harish Kumar **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*