



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38298-2024
Date of Decision: August 08, 2024

KUNAL SEHRAWAT Petitioner(s)
VERSUS
STATE OF HARYANA Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Dinesh Arora, Advocate and
Mr. Prashant Deswal, Advocate
for the petitioner.

SANDEEP MOUDGIL, J.(ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 438 Cr.P.C., has been invoked seeking the concession for the grant of anticipatory bail to the petitioner in FIR No.0206, dated 17.07.2023, under Sections 406, 420 of IPC registered at Police Station DLF Phase III, District Gurugram (Haryana).

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

“The Commissioner, Economic Offences Wing Gurugram Police. Sub: Criminal Complaint Against Mr.Mohit Jain ("Accused No. 1), Kunal Singh Accused No. 2"), Akshay Sardana, Founder CEO of Accused No. 4 Company (Accused No. 3, M/s 51 International Pvt Ltd. ("Accused No. 4"), MKJEnterprises ('Accused No. 5") and Kishan Thakur ("Accused No. 6) for Offences Punishable Under Sections 420, 467, 468, 120-B read with 109 and 34 of the Indian Penal Code. 1860. Dear Sir, I, the undersigned, am a 65-years old



retired banker, having over 35-years of experience. I retired from the position of AGM from SBI bank in 2015. My wife, Mrs. Alka Mahajan, is a 61-years old retired schoolteacher. She retired from Queen Mary's School, Tis Hazari, New Delhi in 2021 after teaching for 37 years. We are both currently residing at C-101, Raheja Atlantis, Sector-31, Gurugram-122001. We are constrained to file this complaint with your good offices, because the named accused persons, in conspiracy with each other, have defrauded us of large sums of money which constituted our life savings. Taking advantage of our old age, these accused persons have given life to a conspiracy of fraud and deception, using forged documents and dishonest representations. The facts of the said offences committed by the accused persons are more particularly enumerated hereunder: 1. That my wife and I (hereinafter collectively referred to as "we/the Complainants") were previously residing in the free hold property situated at Plot No. 15, Road No. 43, Punjabi Bagh (West), New Delhi (the "Punjabi Bagh House"). In 2022, after our retirement, my wife and I decided to sell the Punjabi Bagh House and move to the suburbs in a quieter and better-planned gated-society. This decision was prompted by the fact that both our daughters are married and away, and we live alone. For this reason, we wanted to move to a more secure locality. We had planned to move to an apartment in the suburbs in a gated community. The idea was to use the proceeds from the sale of the Punjabi Bagh House to purchase this apartment, and to use the remainder of the sale proceeds to augment our life savings with a view to have financial security in our retirement. Moreover, I am a heart patient, having undergone Percutaneous Transluminal Coronary Angioplasty [PTCA] in August 2012, and thus, the said money was also necessary and important for us in case of any medical exigencies 2. We started the process



of trying to sell our PunjabiBagh House and to buy the new apartments simultaneously. In or around 03.05.2022, we approached the Accused No. 4-Company, which was in the business of property brokering, to help us see some suitable properties to purchase. The Accused No. 3 informed us about one Platinum Towers, where we may find an apartment which we may like. The Accused No. 3, the Founder/ CEO of the Accused No. 4 Company, sent the Accused No. 2 as his representative to take us around for the property visits. After showing us the property in Platinum Towers, the Accused No. 2 informed us that there are some flats in the Ambience Cairtriona society. When we enquired about the prices of such apartments, the price which we were informed by the Accused No. 2 turned to be out of our budget, and for this reason we refused to even visit Ambience Cairtriona. 3. Thereafter, the Accused No. 2 showed us a few more properties, all this while insisting that we pay a visit to Ambience Cairtriona. Upon his vehement insistence, we agreed to visit Ambience Cairtriona somewhere in mid-May. During this visit, it became very evident that purchasing flats in Ambience Cairtriona was beyond our means, even with the sale proceeds of the Punjabi Bagh House and our existing life savings. It was true that the society had all the facilities we were looking for but despite this, we decided to not venture any further into this since it would only be a waste of time. As such, after the visit, we communicated our decision to the Accused No. 2. 4. A few days thereafter, the Accused No. 2 called us and told us to come to Ambience Cairtriona with our cheque book. On the phone, the Accused No. 2 informed us that certain in Cairtriona, owned by a sister-concern of Ambience, M/s Sara Estates Pvt. Ltd. ("Sara Estates"), were available for sale. He indicated that the visit will be in our benefit. As directed by the Accused No. 2, on 21.05.2022, we visited Ambience Cairtriona, and the Accused No. 2 introduced us to the Accused



No. 1. The Accused No. 1 informed us that the Accused No. 1 would be able to help us out and get us the apartment within our budget since the Accused No. I was the "preferred broker for the Ambience Group. During this entire visit, the Accused No I referred to every Ambience employee in the society by their first-name and projected an image that he was at a position of superior authority vis-à-vis every other employee/person present. At the relevant time, the WhatsApp display picture of the Accused No. I was a promotional image of the Ambience Group. 5. However, at the end of the visit, we were shocked and dismayed to find out that the rate being offered by the Accused No. I as well was beyond our budget. As such, we told him that we would be unable to pay that amount. The Accused No. I seemed taken aback and disappointed by this and enquired the reason for our decision. When we informed him that it was due to budgetary constraints, the Accused No. 1 assured us that if we purchased two flats instead of one, he could get us a discounted price for each of the flats. We informed him that purchasing two apartments will be completely exhaust the entire sale proceeds of the Punjabi Bagh House as well as all our existing life savings For this reason, we informed him that buying two apartments would not be possible for us. However, the Accused No. I was unperturbed by this and represented to us that we could easily sell the second apartment for a profit or lease it out to have a stable monthly income. Therefore, even if we exhausted our savings in purchasing the apartments, we would soon be able restore all of it. The Accused No. 2, who was involved in the entire process, did not say anything to contradict the representations which were made by the Accused No. 1. 6. After much contemplation, and in view of the representations of discount and high liquidity of the second apartment, we agreed to purchase two apartments in Ambience Caitriona even at the cost of draining all our



savings. Pertinently, it was only due to the representations made by the Accused Nos. 1 and 2 that we decided to move ahead with the purchase of two apartments instead of one. is pertinent to state that had it not been for these representations and inducements made by the Accused Nos. 1 and 2 that we would be provided a discount, we would not have agreed to explore the option of purchasing apartments in Ambience Cairtriona. 7. That thereafter, the Accused No. 1 informed us that he had negotiated with the Company and that they were willing to offer us two apartments for a price of INR 10,50,00,000/- (Indian Rupees Ten Crores and Fifty Lakhs Only). However, since at the time, we had not yet sold our Punjabi Bagh Property, we could not pay the entire amount upfront. The Accused No. 1 informed us that the payment schedule of the company permitted for the payments to be made in installments. To this end he provided us with a payment schedule on Ambience Cairtriona letterhead. As per this schedule, all payments had to be completed by us by 21.09.2022. 8. Thereafter, and upon the Accused No. 1's insistence that a token amount had to be urgently paid for the apartments, we made payments of INR 20,00,000/- (Indian Rupees Twenty Lakhs Only) and INR 40,00,000/- (Indian Rupees Forty Lakhs Only) on 23.05.2022 and 25.505.2022, respectively, to M/s Sara Estates Pvt Ltd. through my SBI Account bearing account number 34799406522 as token payment. I was also induced into making a cheque for a sum of INR 1,00,00,000/- (Indian Rupees One Crores Only) to Sara Estates Pvt. Ltd. ("Sara Estate") on 21.05.2022. However, we did not have that much money in our bank account and the Accused No. 1 had assured us that the same will be eneashed only subsequently when we received some sale proceeds from the Punjabi Bagh House and that we had absolute flexibility in terms of having the same sold. By this time, the Accused No. was already aware that we were trying



to sell our Punjabi Bagh House and that in spite of our best efforts, we had not managed to find a buyer. Thus, induced by these representations, I made out a Cheque bearing number 761902 drawn on SBI Bank for the said amount to Sara Estates. 9. Pertinently, we had made these token payments, and had provided the company with a cheque for an amount which we did not have, only on the basis of the representations made to us by the Accused No. 1. Soon after these payments were completed by us, the Accused No. 1 began pressurizing us to make further payments as well as for us to arrange for money so that the cheque could be encashed. Using this pressure, the Accused No. 1 offered to have our Punjabi Bagh House sold and by 10.06.2022, he had facilitated the sale of our house and a sum of INR 1,00,00,000/- (Indian Rupees One Crore Only) was provided to us by the prospective buyer as token amount. After receiving this payment, we gave our go ahead for our cheque given to Sara Estates to be encashed and the same was done on 17.06.2022, and the payment was duly acknowledged by Sara 10. The fact that the Accused No. 1 facilitated this payment of token amount in a flexible manner and managed to find a buyer for the Punjabi Bagh House lent credence in our eyes to Accused No. 1. However, at that time we were unaware that this was all part of his well-hatched scheme to get us to trust him so that he could give life to his conspiracy of misappropriation. 11. Towards the end of June 2022, the Accused No. 1 informed us that a part of the payment will have to be made in cash. We were taken aback by this since this was not informed to us beforehand and we felt that an online transaction would be far convenient. However, the Accused No. 1 informed us that this was usual practice to give some amounts in cash for purchase of a property of such high value since the builders often need cash for their business and it reduces their burden of withdrawing the same. The Accused No. 1 was aware that due to our background, we



were concerned about the safety of handling and carrying around such large amounts of cash. Thus, the Accused No. 1 intentionally and dishonestly put us in such an uncomfortable position by making misrepresentations to us and by exploiting our ignorance. He, thereafter, offered to help us out by proposing that he carry the cash and hand it over to Ambience Group. 12. In this manner, the Accused No. 1 got us to entrust him with a sum of INR 50,00,000/- on 30.06.2022 and an amount of INR 50,00,000/- on 09.07.2022. The Accused No. 1 also provided signed receipts acknowledging that the such payments had been made by us and that the same were for the purposes of purchasing them two apartments in Ambience Caitriona. He also instructed us that in a couple of weeks, we should pay the next instalment through RTGS transfer directly to Sara Estates: Pursuant to these instructions, on 14.07.2022, we made two RTGS transfers in the following manner to Sara Estates and the same were acknowledged by them, Sr. No. Date - Amount (INR) Particulars 1. 14.07.2022 87,50,000 SBI RTGS Transfer to Sara Estate for E-801, 2. 14.07.2022-57,50,000/- - SBI RTGS Transfer to Sara Estate for E-1001. 13. The aforementioned payments were also acknowledged by Sara Estates. However, unknown to us, the Accused Nos. 1 and 2 were giving life to a conspiracy whereby they made us make certain payments to Sara Estates through bank transfer for which acknowledgements were provided by Sara Estates directly and some payments in cash to be handed over to Accused No. 1 to be paid to Sara Estates on our behalf. Such for which acknowledgement was given by him. This was done under the guise that in transaction of such high value, it was usual business practice that some part is given in cash. We were unaware of such standards and only relied upon the representations and inducements of the Accused Nos. 1 and 2. We were assured by them that this was all over-board since the source of our funds was disclosed and accounted for, and



that for this reason we had nothing to worry about. 14. On 27.07.2022, the Accused No. 1 met with us and informed us that we will need to pay an additional amount of INR 40,00,000/- (Indian Rupees Forty Lakhs Only) towards parking slots, and INR 56,00,000/- (Indian Rupees Fifty-Six lakh only) towards IBMS deposit, which was not included in the deal price. We informed the Accused No. 1 that we had already over-extended our budget and that we had not money for making this payment. The Accused No. 1 assured us that we could later sell the parking to some other resident, but at the moment, such payment was necessary. As a consequence, I had to apply for a loan and even received in-principal approval for the same to be able to cover this shortfall. In furtherance of this conspiracy, on 07.09.2022, the Accused No. 1 again collected a sum of INR 1.46,00,000/- from us and provided us a receipt for the same. However, we later came to know that the Company never asked us to make any such payment. 15. The Punjabi Bagh Property was finally sold in September 2022, with the sale deed being finalized on 09.09.2022. It is pertinent to mention that by helping us sell our Punjabi Bagh Property, not only did the Accused No. 1 further gain our trust but he also became aware that we were now in possession of a large sum of money which was paid to us by the buyer of the Punjabi Bagh House. At that time, we did not know that the only reason the Accused No. 1 was so keen on being the person to help us sell the property was so that he could give life to his conspiracy of misappropriation. The entire scheme of the Accused Nos. 1 and 2 was to help us initially, gain our trust, and thereafter, misappropriate our money under the guise of making cash payments to the Company on our behalf. 16. In this manner, the Punjabi Bagh property was sold, and we promptly proceeded with completing the necessary formalities for completing the purchase of the two apartments in Ambience Cairtriona since



we had sold our residence and were desirous of moving into our new residence. In this regard, all necessary payments had been made by us either to Sara Estates directly or to the Accused No. 1. However, when we asked the Accused No. 1 for providing us with an update on the status of the payments which were to be made by him to Sara Estates as well as the Builder-Buyer Agreements ["BBA"], the Accused No. 1 began to provide evasive responses before beginning to avoid our calls and messages altogether. When we reached out to the Accused No. 2, he stated that the knowledge for the same would be available with the Accused No. 1 and that he had no information regarding the same. As such, Accused No. 2 failed to protect our interests. 17. Due to the evasive responses being provided by the Accused No. 1, and with the last date of payment as per the payment schedule fast approaching, we thought it would be to confirm the balance amount from Ambience Group directly. Somewhere in midSeptember we procured this information and were shocked to find out that only a sum of INR 3,05,00,000/- (Indian Rupees Three Crores and Five Lakhs Only) was received by them from us and an amount of INR. 7,45,00,000/- (Indian Rupees Seven Crores and Forty-Five Lakhs Only) was still pending from our end. As such, it became evident that they had only received a sum which we had paid through RTGS and that no money had been with them by the Accused No. 1. contrary to his representations to us. This was the first time when the dishonest intentions and the malicious misrepresentation of the Accused Nos. 1 and 2 came to be revealed. 18. Upon confronting the Accused No. 1, he confessed that he had made a mistake and had failed to deposit the monies in a timely manner and the same was held up somewhere. Even at this point, the Accused No. 1 did not admit his wrongdoings and gave in this excuse. He requested us to make a payment of INR 5,95,00,000- (Indian Rupees Five Crores and Ninety-Five



Lakha) before the last date of payment (ie., 14.09.2022 and 21.09.2022 respectively for the two apartments) and that a remaining sum of INR 1,50,00,000/- (Indian Rupees One Crores and Fifty Lakhs Only) would be paid by him directly to Sara Estates since he had that much of our money still in his possession. Considering our past transactions with him, we believed him. 19. It is important to highlight that faced with this unexpected turn of events, which involved our entire life savings (including proceeds from the sale of our only residential property), we had no other option. The Accused No. I was aware of this fact, and he exploited the same by making these further dishonest representations to induce and prevent us from taking any action against him for his crimes. Somehow, on 12.09.2022, we made the payment of INR 4,62,55,379/- (Indian Rupees Four Crores Sixty-Two Lakhs Fifty-Five Thousand Three Hundred and Seventy-Nine Only) through two separate RTGS transfers to Sara Estates. TDS amount of INR 4,96,928/- (Indian Rupees Four Crores Sixty-Two Lakhs Fifty-Five Thousand Three Hundred Seventy-Nine Only) was also deposited by us on the same day. 20. Thereafter, we consistently sought updates from the Accused Nos 1 and 2 regarding when the Builder Buyer Agreements for the two apartments be executed. Each time we sought such information from the Accused No. 2. he would pretend to be ignorant and state that the information would be available with the Accused No. 1. He would further state that he has been unable to get in touch with the Accused No. 1. When we would approach the Accused No. 1, he would give us one excuse or the other regarding why the Builder-Buyer Agreement was not ready yet. 21. On 16.09.2022, one Mr. Kishan Thakur. the Accused No. 6 came to our residence and provided us with a blank Builder-Bayer Agreement ("BBA") for flat number E-801 and asked us to sign the same. He stated that he was an employee of Ambience and that he was



bringing the BBAs to us upon the instructions of the Accused No. 1. He represented to us that he will have the BBAS countersigned by the concerned official from Sara Estates along with the Provisional Allotment Letters which the Accused No.1 had previously gotten signed from us on 15.09.2022. He falsely represented to us that the concerned official was busy and therefore, his signatures have not been obtained till date. It was only later that we found out that the Accused No. 7 was an employee of the he Accused No. 1, and it was part of the conspiracy that we were assured by them that they will follow-up and ensure that both the documents are duly countersigned and a copy of them is provided to us promptly. 22. In view of this BBA and misrepresentations of the Accused, we paid the remaining amount INR 1,30,00,000/- (Indian Rupees One Crore and Thirty Lakhs Only) on 17.09.2022 to Sara Estates by utilizing the last of our life savings. As per the Accused No. 1's representations, the balance amount of INR 1,50,00,000/- (Indian Rupees One Crore and Fifty Lakh Only) was to be paid by him before the last date. On 22.09.2022 the Accused No. 6 again came to our residence with another BBA for Flat No. E-1001 and got us to sign the same. He represented to us that the BBAS will shortly be finalized. As such, we were under the impression that the entire payment for the apartments had been completed and paid to Sara Estates, including the monies to be paid by the Accused No. 1, since had that not been the case, we would not have been asked to sign the BBAS. 23. Thereafter, on 24.09.2022, the Accused No. I made further dishonest representation regarding how the BBA and the Provisional Allotment Letter was almost finalized and that in order to save time, we should proceed to purchase stamp papers. The Accused No, I assured us that we can buy the stamp papers without any stress whatsoever. In this manner, the Accused No. I induced me to expend a further sum of INR 29,82,000/-



for the purchase of Stamp Paper dated 24.09.2022 and bearing Certificate No. GOX20221113, thereby causing further wrongful losses to us. 24. in spite of all this, we were not provided with the executed BBAS and Provisional Allotment Letters even until October 2022, contrary to the promises of the Accused Nos. 1, 2 and 7. During this time, the Accused No. 1 would continuously give us vague and evasive responses. We were beginning to get concerned, and the entire situation was also putting a lot of financial strain on us since all our life savings had been put into purchasing these apartments and we were also paying a monthly rental amount of INR 1.30,000 (Indian Rupees One Lakhi and Thirty Thousand Only) since September, 2022 for our rented premises. 25. For this reason, on 04.10.2022, we sent an email to Mr. Sumit Choudhary on his email id smilchoudhary@ambienceindia.in in seeking the status of completion of the registration process for the two apartments. In this email, we mentioned that we had already completed the entire payment for the purchase of the flats and had also purchased stamp papers for registration of the E-1001 Apartment: We urged him, to expedite the process of the registration and asked him to provide us with the signed copy of the BBA and that we had already signed the same and sent it to Ambience Group through its representative (Accused No. 1) on 16.09.2022. 26. On the same day, we received a call from Mr. Sumit Choudhary who informed us that a sum of INR 1,50,00,000/- (Indian Rupees One Crore Fifty Lakhs Only) was still pending from our end, and for this reason the allotment had not been done, He further explained to us that in the absence of complete payment being made by us, the Company cannot issue BBAs to us for the purposes of signing. Upon being informed of the same, it was confirmed to us that the Accused No. 1 had not made the necessary payment



as promised by him. In view of the same, we again tried following up with the Accused Nos 1 and 2 for the status of our money in the Accused No. I's possession. It is pertinent to mention that at the concerned time, we had absolutely no funds to be able to make such a large payment to the Company. We were completely reliant on the Accused No. I returning the amounts which he had misappropriated from us. 27. However, even after this, the Accused No. I was not transparent with us, and every time we followed-up with him. he would provide us with one excuse or the other. After several days of following up with him, the Accused No, I assured us that he will make the payment by Diwali and we will have our apartments soon thereafter. In view of these representations, we went to visit the Accused No. 1 at the Accused No. 5's office on 28.10.2022 (ie.after Diwali), accompanied by an employee of Sara Estates, Mr. Amit Malhotra. During this visit, the Accused No. I again assured us that he was almost done with getting back our money and that he will make the necessary payments to the Company and return the rest of the money to us till 10.11.2022. To demonstrate his good faith, the Accused No. 1 also provided us with Security Cheques dated 31.10.2022 and 10.11.2022 for an amount of INR 2,50,00,000/-(Indian Rupees Two Crores Fifty Lakhs Only), stating that it would cover the sum given to him by us as well as any interest which may have accrued on the sum. 28. Thereafter, the Accused No. I began avoiding our calls. Even the Accused No. 2 would feign ignorance and would not provide us with cogent responses. Although the Accused No. 2 portrayed himself to be sympathetic to our cause, neither did he ever warn us against the fraudulent conduct of the Accused No. 1 nor did he take any cogent action to help us retrieve our money. All through this time, we were constantly running the risk of losing the allotment of the concerned apartments. When even by



10.11.2022, the Accused No. 1 had not made the payments as had been promised by him, we paid a visit to his office in Gurugram (the Accused No. 5's office). However, to our shock, the office was shut and there was nobody to be found there. Thereafter, the Accused No. 2 took us to the Accused No. 1's residence at A35, House No. 29, DLF Phase-1, Gurugram. Even at his residence the Accused No. 1 refused to meet us and threatened us that if we did not stop "bothering him", he will have to "take things in his own hands". We were completely shattered by this, because not only had he misappropriated large sums of monies belonging to us, but now he was also threatening us in a manner which really scared us and deterred us from following up with him for our money in his possession. 29. On 03.12.2022, we received two cancellation letters from Sara Estates whereby our application for provisional allotment of the two concerned apartments was cancelled due to nonpayment of dues to the company by 14.09.2022. Pertinently, it was Accused Nos. 1 and 2 who were in direct contact with the company on our behalf with respect to the purchase of the two apartments, especially during the relevant time period when the last instalment had to be paid to Sara Estates. Thus, it became clear that the Accused Nos. 1 and 2 were not inclined to return us our money or to make good on any of the promises they had made to us in this regard. Moreover, we were also scared to speak to Accused No. 1 because he would not answer our phones, and if he did, he would threaten us. In this regard, he even wrote a completely false and fabricated email to us on 09.12.2022 wherein he threatened us with frivolous legal action so as to deter us from pursuing our rightful and legal claims against him. 30. Thereafter, and with much difficulty, we entered into negotiations with the Ambience Group. It was explained to us that the Accused Nos. 1 and 2 were not employees of the Company and that they were acting without



any authority whatsoever vested in them by the Company. As such, the Company was duty-bound to cancel the allotment and their hands were tied. In view of the same, we renegotiated with the Company, and were able to get the allotment for flat E-801 for an increased market price of INR 8,50,00,000/- (Indian Rupees Eight Crores and Fifty Lakhs Only). As such, not only did a wrongful loss of INR 3,25,00,000/- (Indian Rupees Three Crores Only) ensued to us due to the wrongful acts of the accused, but we also lost out on an entire second apartment and had to suffer severe trauma. 31. Moreover, we realized that there was no way in which the Accused No. 1 would return our money to us, and that we were left with no option to encash the security cheques provided by him. Thus, we encashed cheques amounting to INR 2,50,00,000/- (Indian Rupees Two Crores and Fifty Lakhs Only). However, the same were dishonored, further evidencing that the Accused No. 1 never was inclined to return our money and had an intention to cheat us from the inception of when he started collecting money from us under false and dishonest representations. We reserve our right for taking appropriate measures against the Accused No. 1 with respect to the dishonor of his cheques, however, intervention of your good offices is sought to bring the accused to justice for the fraud perpetrated by them against us. Pertinently, it is clear that the Accused No. 1 had made dishonest representations to us in September, 2022 in order to hide his wrongdoing of having misappropriated payments made to him for purchase of the two Caitriona Apartments, and had thereby induced us to part with INR 2,46,00,000/-, and that the Accused No. 1 also made use of several forged documents to induce us. 32. Thus, the actions of the accused persons have caused a wrongful loss to us to the tune of INR 5,71,00,000/- (Indian Rupees Five Crores and Seventy-One Lakhs Only), and direct wrongful gain to them to the tune of INR 2,46,00,000/- (Indian Rupees



Two Crores and Forty-Six Lakhs Only) 33. Thus, in view of the aforementioned facts, the following offences are made out against the named accused in the complaint and other unknown accused, (1) Section 406 of the Indian Penal Code That we had entrusted the Accused Nos. 1 and 2 with large sums of money, which they were supposed to deposit with Sara Estates on our behalf. However, they have misappropriated such sums for their own personal benefit, thereby causing wrongful losses to us. (ii) Section 420 of the Indian Penal Code The Accused Nos. 1 and 2 have made dishonest representations and thereby got us to part with large sums of money, which they later misappropriated, causing wrongful losses to us and wrongful gains to themselves. Thus, they have committed the offence of criminal cheating penalized by Section 420 of the IPC. The said offence is a serious, cognizable offence carrying a maximum imprisonment of seven years. (iii) Section 467 of the Indian Penal Code The Accused Nos. 1 and 2 have used forged and fabricated Builder-Buyer Agreements on the letterhead of Ambience Group to purport them as genuine. Thus, they have forged a valuable security and are liable to be prosecuted under Sec, 467 of the IPC which carries a maximum punishment of ten years imprisonment. Pertinently, this being the case, for the purposes of investigation. there is no need for serving the accused with a Sec. 41A CrPC notice, and they can be directly arrested to unearth the true extent of the offences. (iv) Section 468 of the Indian Penal Code The Accused No. 1 and 2 have used these bogus, forged Builder-Buyer Agreements and Provisional Allotment Letters to perpetrate their fraud and to cheat us. Thus, they are liable to be prosecuted under Section 468 of the Indian Penal Code which carries a punishment of imprisonment which may extend to seven years. (v) Section 506, Part II of the Indian Penal Code - That the Accused No. 1 has made threats and has thereby put us in the fear of



grievous harm and injury, and he has thus, committed the offence punishable under Section 506, Part II of the IPC. The said offence is punishable with up to seven years imprisonment and is a cognizable offence in Haryana. (vi) Section 120-B-109 and 34 of the Indian Penal Code All the Accused Persons have acted in concert with each other in furtherance of a common intention, and to give life to their conspiracy of misappropriation All acts were committed by the accused with the aid and assistance of the other accused. As such, all accused persons are liable under Section 120-B, 109 and 34 of the IPC. 34. In view of the aforementioned facts and circumstances, we request the urgent intervention of your good offices for registration of the FIR against the named accused person. Pertinently, the offences in the instant case are serious, cognizable offences and therefore, in light of the ruling of the Hon'ble Supreme Court in the case of Lalit Kumari Government of Uttar Pradesh, your good offices can directly register a FIR and begin the investigation against the named accused person. Yours Sincerely, SD Vivek Mahajan, Mobile No: 91-9871028649,9871028649, 9911142010.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner would contend that his role as per FIR version is limited to the extent of arranging the meeting between the developer and the complainant. Apart from that, there is no other overt act which has been attributed to him.

He further asserts that two cheques in question as alleged in the complaint amounting to Rs.1 crore each has been given to M/s Sara Estates Pvt. Ltd. to which the petitioner is not a party nor is a beneficiary in any



manner whatsoever, therefore, his custodial interrogation would not be required.

On behalf of the State

Learned State Counsel appearing on advance notice on instructions from Investigating Officer opposes the prayer for grant of anticipatory bail on the grounds that that petitioner is required for interrogation on account of the fact that he has received the commission on the said transaction. The recovery of the commission amount has not been effected yet.

4. Analysis

Be that as it may, having regard to the defence raised by the learned State counsel for the commission if any received by the petitioner i.e. only on performing his professional duty and not by any means of illicit or wrongful gains does not hold good and not inspire confidence of this Court to deny the present petition. Hence, this Court is of the considered view that custodial interrogation of the petitioner would not be required at this stage since nothing is to be recovered from him. However, learned counsel for the petitioner undertakes that petitioner will join investigation within a period of one week from today.

5. Decision

Hence, in view of the admitted set of circumstances before this Court, the petitioner is directed to be released on anticipatory bail subject to his joining investigation and reporting to the Investigating Officer concerned within a period of one week from today, on 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 438(2) of Cr.P.C which are reproduced below:-

(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 437, 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 one week, the order passed by this Court today shall automatically stands cancelled.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

08.08.2024

Sangeeta

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