IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-30471 of 2014(O&M)
Date of decision : 26.05.2015

Manav Malhotra

...... Petitioner

versus

State of U.T. Chandigarh & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Gahlawat, Advocate for the petitioner.

Mr. A.S. Gill, APP for U.T. Chandigarh.

Mr. Navdeep Chhabra, Advocate for respondent No.2.

ANITA CHAUDHRY, J.

Petitioner Manav Malhotra seeks anticipatory bail in FIR No. 350 dated 24.08.2014 registered under Sections 406 and 420 IPC at Police Station Sector-39, Chandigarh.

It is necessary to give the facts disclosed by the complainant.

The allegations leveled by complainant Ravinder Singh are that the petitioner, a property consultant approached him as an authorized dealer/ agent of M/s EMAAR MGF and that he had a plot No.31 in Sector 104, S.A.S. Nagar, Mohali for sale. The total price of the plot was Rs.53,63,375/-. The petitioner told the complainant that initial booking of Rs.5 lacs had to be made. The complainant approached his uncle for an advance of Rs.5 lacs, which was paid in cash to the petitioner on 25.11.2010. Receipt in this regard was also issued to him in December, 2010. The petitioner asked him to pay another sum of Rs.5 lacs, which was the next installment. The complainant called the petitioner to his house and gave a cheque of Rs.5 lacs in favour of Gauransh Associates. This consultancy firm was owned by the petitioner. In February, 2011, the petitioner asked the complainant to pay another installment of Rs.5 lacs to be paid directly to M/s EMAAR MGF. The complainant handed over a cheque of Rs.5 lacs in favour of M/s EMAAR MGF, which was encashed by the company. The petitioner approached the complainant and asked him to pay another sum of Rs.1 lac as the plot was to be allotted in his favour. The complainant gave a cheque in favour of Gauransh Associates on 06.05.2011. The petitioner again asked for a sum of Rs.1,35,000/- and a cheque in favour of Gauransh Associate was handed over to the petitioner on 12.06.2011. The petitioner is alleged to have asked the complainant to pay another sum of Rs.5 lacs as some formalities were to be completed. The complainant was finding it difficult to arrange any such amount in that short period but was told that if the amount was not paid within two days, then the earlier amount would be forfeited.

The allegations made by the complainant are that in total a sum of Rs.17,35,000/- was taken by the petitioner, a sum of Rs.5 lacs was paid to M/s EMAAR MGF. In December, 2011 the complainant approached the petitioner and asked him to supply the documents of the plot. The complainant kept on approaching the petitioner and went to his office a number of times. The petitioner asked him to provide the documents so that he could get his loan approved. The complainant had further disclosed that his loan was not processed for want of necessary documents. The complainant alleged that the petitioner failed to provide the documents and issued threats. The complainant approached the senior officers of the company M/s EMAAR MGF, who did not hear his grievances and asked him to speak to the dealer.

A complaint was made to the police on 06.12.2011. The matter was examined by the Department and the case was handed over to Economic Offence Wing. The petitioner is said to have then approached the complainant for compromise and it was agreed that he would pay Rs.10.55 lacs to settle the matter and in furtherance to the settlement, he gave a cheque of Rs.1.55 lacs, which was encashed. Subsequently, three cheques of Rs.3 lacs each were given by the petitioner which were dishonoured and complaints under the Negotiable Instruments Act was filed. The complaint given by the complainant was revived and FIR was registered on 24.08.2014.

The present petition for anticipatory bail was filed in September, 2014.

On the very first day of listing, the counsel representing the petitioner had stated that only a sum of Rs.7,35,000/- had been paid to the petitioner by cheque and the plot had already been transferred in the name of complainant, but possession had not been handed over to him and he is ready to return the amount in case possession is handed over to him. It was further submitted that earlier a compromise was arrived at between the parties at the instance of the police and it was settled for Rs.10,55,000/-, out of which Rs.1,55,000/- had been paid. It was also contended that the petitioner was ready to settle the dispute and gave an undertaking that amount would be returned on the next date of hearing, in case the complainant was agreeable.

On this assurance, notice of motion was issued and arrest of the petitioner was stayed by a Coordinate Bench.

On appearance, the matter was referred for mediation and the matter was settled on 22.12.2014. It was agreed that the complaint under the Negotiable Instruments Act would be withdrawn while the FIR would be quashed on the conditions that were agreed between the parties.

The parties had agreed that the petitioner/ Gauransh Associates shall pay a consolidated amount of Rs.8,30,000/- as full and final settlement and this amount was to be paid through demand draft on or before 15.03.2015 and after the payment of the amount, complaint under the Negotiable Instruments Act was to be withdrawn. It was further agreed that the complainant would not change the status of the complaint and would not object to the quashing of the FIR on the basis of compromise. A sum of Rs.1,75,000/- was to be paid at the time of hearing in this case while the balance amount was to be paid at the time of quashing. There were some other conditions as well which are not relevant for the disposal of this petition.

A petition for quashing of the FIR on the basis of compromise was also filed in January, 2015. The instant petition and the other one for quashing of the FIR were fixed for same dates. A sum of Rs.1,75,000/- that was to be paid on first hearing, was paid by a demand draft and the case was adjourned for 16.03.2015 to enable the parties to complete the other conditions. Presentation of challan was also stayed.

On 16.03.2015 no one had appeared for the petitioner in the quashing petition as well as in this petition for anticipatory bail and the case was adjourned to 20.04.2015. On that date, proxy counsel appeared in both the cases and urged that the counsel representing the petitioner is undergoing treatment in Fortis Hospital. There was an objection from the respondents and the petitioner was asked to be present in Court on the next date of hearing, if the counsel failed to appear. The case was adjourned to 07.05.2015. The petitioner appeared and sought 15 days time to pay the balance amount. The case was adjourned to 25.05.2015 for making the payment and last opportunity was granted. Yesterday, the petitioner failed to bring the payment and expressed his inability. Therefore, arguments on bail application were heard, but at the end, a request was made to give one more day, so that he could comply with the conditions of compromise. Accordingly, the case was adjourned for today.

Counsel for the petitioner states that a draft of Rs.3 lacs has been brought and the petitioner could not arrange for the remaining amount. They wanted that the matter should be adjourned again, which was opposed by the complainant.

I have heard both the sides at considerable length.

Learned counsel for the petitioner has urged that the plot had been allotted to the petitioner and had referred to Annexure P-2 and it was urged that thereafter the allotment was transferred in favour of the complainant and in this regard an indemnity-cum-undertaking, Annexure P-3 was signed by the complainant, which was submitted in the office and the Company had sent acknowledgment, Annexure P-5 regarding receipt of documents for effecting the transfer. The counsel referred to Annexure P-5 and urged that the letter was written on 13.1.2011 and thereafter the petitioner helped the complainant avail the loan facility from India Bulls. It was urged that in December, 2011 since the complainant failed to pay the amount then final notice was sent and thereafter the complainant sent a legal notice sent to him. It was urged that between December 2011 and 2014 no complaint was made and after a delay of three years, this FIR was lodged. It was urged that the settlement could not be effected as the complainant had violated the conditions and bailable warrants were issued in the complaint case. Counsel has referred to order dated 04.04.2015 passed in the complaint filed under Section 138 of Negotiable Instruments Act. He further contends that it is a civil dispute and the property has been transferred in favour of the complainant and the complainant is asking for return of the amount and now accusing him of cheating. It was urged that in the connected petition, he had filed an application for arraying the builders as party, which had been declined. It was urged that the petitioner was still ready to pay the amount.

The bail application has been opposed by the State as well as the complainant. It has been urged that without any allotment the petitioner had received a sum of Rs.5 lacs on 25.11.2010 and cheating had started before even the plot had been allotted by EMAAF MGF. It was urged that if the plot had been transferred in favour of the complainant, there was no reason why the petitioner was accepting the amount and why he had agreed to return the amount. It was contended that the complaint was lodged with the police as early as in December, 2011 and the matter was handed over to Economic Offence Wing and then fearing registration of the case, the petitioner approached for settlement and settlement was effected, but the petitioner backed out and gave cheques which bounced and the complaint was revived and FIR was registered and the petitioner is only abusing the process of Court and he was never keen for settlement and there was element of cheating from the beginning and it was the petitioner who violated the terms and did not make the payment before 15.03.2015 and had been seeking adjournments or absenting from the Court.

I have perused the documents available on record. The allotment letter referred to by the complainant is dated 18.12.2010, which refers to the application filed by Gauransh Associates on 01.12.2010. Therefore, in November, 2010 when the petitioner is alleged to have accepted a sum of Rs.5 lacs, there was no allotment in his favour. The petitioner has been unable to produce any document to show that the allotment had been transferred in favour of the complainant. Acknowledgment Annexure P-5 only shows that builders had received the application for transfer. The petitioner had been demanding his money back. The petitioner did not deposit the amount with the builders. When the last show cause notice was received by the complainant, that he came to know the facts and approached the police. The complainant had made it clear that he did not want the plot and was only keen on getting his money back. For the last three years, the complainant is running from pillar to post to get his money back. The petitioner has failed to show that the amount he had received from the complainant was deposited with the builders. He undertook to pay the amount and to enable him and give further time the case was adjourned several times.

In the given circumstances, seeing his conduct, the discretionary relief of anticipatory bail cannot be allowed. The petition is dismissed.

May 26, 2015 **(ANITA CHAUDHRY)**
Jiten **JUDGE**