IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24885 of 2016 (O&M)
Date of decision : 03.10.2016

Anish Sharma ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Raj Kumar Gupta, Advocate
for the petitioner.

Ms. Simsi Dhir Malhotra, DAG, Punjab

Mr. Yogesh Goel, Advocate
for the complainant.

JITENDRA CHAUHAN, J. (Oral)

CRM-28024-2016

Allowed as prayed for, subject to all just exceptions.

CRM-28025-2016

CRM is allowed and reply on behalf of the complainant is taken on record, subject to all just exceptions.

Main Case

Third petition has been filed under Section 438 of the Code of Criminal Procedure (for short, 'the Cr.P.C.') seeking anticipatory bail in FIR No.21 dated 01.02.2012 registered under Sections 420 and 120-B of the Indian Penal Code (for short 'the IPC') at Police Station Division No.6, Industrial Area, Ludhiana.

The learned counsel for the petitioner refers to Annexure P-2 and contends that the petitioner had surrendered and was subsequently released with an observation that his custodial interrogation in the matter was not required. He states that subsequent thereto, supplementary charge-sheet was filed, wherein the petitioner was shown to be on bail. The petitioner was neither summoned by the trial Court nor informed by the prosecution with regard to filing of challan. The learned counsel refers to Sections 61 and 81 Cr.P.C. to contend that the prosecution and the Court are under obligation to inform the petitioner after the filing of supplementary charge-sheet. He submits that without being given an opportunity for fair hearing, he has been declared a proclaimed offender vide order dated 27.07.2016.

Copy of order dated 27.07.2016 has been furnished in the Court and same is taken on record as Mark 'A'.

On the other hand, the learned State counsel as well as learned counsel for the complainant states that firstly, father of the petitioner, namely Neeraj Sharma being attorney of the owner of the property i.e. Smt. Leelawati executed an agreement to sell dated 29.02.2008 in favour of the complainant and received ₹60.50 lacs out of the total sale consideration of ₹98.50 lacs from the complainant. Thereafter, he sold the same very property to Gayatri Overseas, a partnership firm belonging to him and his son (petitioner). Subsequently, they mortgaged the said property and obtained a loan of ₹51 lacs from Bank of India.

I have heard the learned counsel for the parties and carefully perused the entire record on file.

This is the third bail petition by the petitioner. The earlier two petitions were dismissed as withdrawn. Affidavit filed by Assistant Commissioner of Police (Central), Ludhiana spells out that challan against the father of the present petitioner was presented in the Court on 30.10.2012. Challan against the petitioner was presented on 10.03.2015 as an enquiry was pending regarding role of the petitioner. After the presentation of the challan, the petitioner absented from the trial Court. He was declared proclaimed offender after following procedure. This Court is unable to comprehend how the petitioner, despite the rejection of his bail was allowed to join the investigation. The conduct of the investigation officer is reprehensible and State is directed to take necessary action against the said investigation officer. The huge amount of ₹60.50 lacs was allegedly taken from the complainant in the garb of execution of agreement to sell and the said property has been transferred in favour of petitioner and his father. After committing fraud with the complainant, the petitioner has taken a loan by mortgaging the property in question. In these circumstances, the present petition is dismissed.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

03.10.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No