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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17087 of 2017 (O&M)
Date of decision: July 28, 2017

Krishna Devi

......Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Dinesh Trehan, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG Haryana.

Mr. R.S. Malik, Advocate for the complainant.

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A.B. CHAUDHARI, J

CRM No.17641 of 2017

Heard.

Application is allowed subject to all just exceptions. Annexures R-1 to R-5 are taken on record.

CRM-M-17087 of 2017

This is a petition for grant of anticipatory bail to the petitioner in FIR No.122/2017 dated 24.02.2017, under Sections 406, 420, 120-B of Indian Penal Code, 1860, registered at Police Station Palam Vihar, District Gurugram.

Learned Senior counsel for the petitioner, in support of the petition, vehemently argued that the custody of the petitioner is not at all necessary. According to him, this Court had issued an interim order granting *ad interim* anticipatory bail to the petitioner, on 15.05.2017 and the petitioner is ready to cooperate with the Investigating Officer and as such, there is no need to refuse the relief of anticipatory bail to the petitioner. Learned Senior counsel submits that the petitioner did not receive the amount as alleged, but an amount of ₹22 lakhs was received from Anil Napgal and the rest was from the complainant-Pankaj Sharma. Therefore, complainant-Pankaj Sharma was not entitled to the entire amount. Learned Senior counsel then submits that the dispute in question, at the most, is of civil nature and that is the another reason why *ad interim* order deserves to be confirmed.

Per contra, learned counsel for the respondent-State as well as complainant vehemently oppose the petition. Learned counsel for the complainant invited my attention to the documents filed in CRM No.17641 of 2017 and submits that the petitioner received huge amount from the complainant and there is receipt (Annexure R-2) showing the receipt of amount of ₹43,48,000/- from the complainant-Pankaj Sharma. Learned State counsel also opposed the petition for anticipatory bail to the petitioner and submits that the allegations in the FIR clearly show that the petitioner had definite intention to cheat the complainant.

Heard learned counsel for rival parties at length. There is an advance receipt (Annexure R-3) on record about the petitioner receiving an amount of ₹65 lakhs and said advance receipt shows receipt of ₹43 lakhs from Pankaj Sharma and ₹22 lakhs from Anil

Nagpal. Petitioner having received the huge amount from the complainant-Pankaj Sharma was under an obligation to complete the agreed transactions, but then it is clear form the record that the petitioner did have in mind the criminal intention to misappropriate the entire amount and thus, cheated the complainant by refusing to complete the transactions. The submission made by learned Senior counsel for the petitioner that the nature of the dispute is civil does not appeal to me since there is no justification to show anywhere as to why the transactions was not completed having accepted huge amount from the complainant-Pankaj Sharma.

On the request made by learned Senior counsel for the petitioner, the petition was again heard on 26.07.2017. Learned counsel for both the parties were present and were heard.

Learned Senior counsel for the petitioner has pointed out referring to CRM No.17641 of 2017 filed by the complainant that Annexure R-3 receipt itself shows that the amount of ₹22 lakhs was paid by Anil Nagpal. The said amount of ₹22 lakhs was paid back to Anil Nagpal and the receipt given by him is on record. Therefore, it is established that the amount of ₹22 lakhs was never paid by the complainant.

Per contra, learned counsel for the complainant contended that Anil Nagpal is partner of the petitioner and they are in collusion and thus, showing the factum of receipt etc. which is totally false.

Learned Senior counsel for the petitioner then contended that the agreement to sell does not stipulate any time limit for completion thereof and the petitioner would be ready to effect the sale-deed if the complainant accepts the offer and pays the remaining amount.

Learned counsel for the complainant vehemently opposed the suggestion and submitted that as a matter of fact, the petitioner has raised huge loans from the Bank on the property in question and the complainant cannot take risk of said loan liability which the petitioner has taken from the Bank and the amount is now almost to the extent of ₹2 crores. At any rate, according to the learned counsel for the complainant, complainant would not be ready to accept the contention about payment of ₹43 lakhs as the entire amount was paid in the sum of ₹68 lakhs.

Looking to the above contentions and upon perusal of the documents referred to me in the main petition as well as in CRM No.17641 of 2017, I find that it is not in dispute that the amount atleast ₹43 lakhs was received from the complainant. In fact, learned Senior counsel for the petitioner fairly admitted that the amount was so received. But then, the petitioner having mortgaged the entire property and having obtained huge loan, it cannot lie in the mouth of the petitioner that the complainant should again pay and complete the transactions. All that was done by the petitioner on his own and the suggestion of the petitioner that the complainant should clear the loans on the property and obtain the sale-deed, is nothing but showing a carrot. The complainant cannot be allowed to be again put in the trap as suggested by the petitioner. The question whether the petitioner has received ₹68 lakhs or ₹43 lakhs from the complainant cannot be gone into nor any adjudication is possible. At any rate, since the petitioner has admittedly received huge amount from the complainant, no preface can be put on his action of fraudulent nature.

In the wake of the fraudulent nature of the transactions committed by the petitioner, there is prima-facie case made out against her and the offence being serious, I do not think, the relief of anticipatory bail should be extended to the petitioner.

In that view of the matter, this petition stands dismissed. Interim order dated 15.05.2017 granting *ad interim* anticipatory bail to the petitioner stands vacated.

(A.B. CHAUDHARI)
JUDGE

July 28, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No