# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 201 CRM-M-2685-2015 (O&M)

Decided on : 17.01.2017

Mukesh ..... Petitioner(s)

VERSUS

State of Haryana ..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. S. K. Garg Narwana, Senior Advocate, with
Mr. Virat Amarnath, Advocate, for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Vipin Ghai, Senior Advocate, with
Mr. Deepanshu Mehta, Advocate, for the complainant.

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DEEPAK SIBAL, J. (ORAL)

Through the present petition filed under Section 438 of the Code of Criminal Procedure, 1973 (for short – the Code), the petitioner seeks the concession of grant of anticipatory bail in FIR No. 570, dated 29.12.2014, registered under Sections 406 and 420 IPC, at Police Station City Sonepat, District Sonepat.

As per allegations in the FIR, the petitioner had entered into an agreement with the complainant for the sale of 837 square yards of land owned by him and pursuant to such agreement, he had accepted Rs. 66.96 lakhs from the complainant. However, later, neither did the petitioner get the sale deed registered in favour of the complainant nor did he return his money. Instead, through an agreement dated 18.11.2014, the petitioner entered into another agreement to sell 1000 square yards of land including the land already sold to the complainant to some other person namely Dharmender son of Mahender Singh.

Learned counsel for the petitioner denies that the petitioner ever entered into any agreement with the complainant. Alternatively, it is submitted that even if such agreement is assumed to be entered into between the parties, at the most, what arises from the controversy is a civil dispute, entailing no criminal consequences; no prudent man, as in the case in hand, after giving about Rs. 67 lakhs, would have waited for so long to lodge the FIR; that the remedy for the complainant was to file a civil suit for specific performance or for recovery of money; no recovery has to be made from the petitioner; as per the interim order passed by this Court, the petitioner has already joined investigation and since the entire matter is based only on documentary evidence, the petitioner is entitled to the grant of anticipatory bail. In support of his contentions, learned counsel for the petitioner relied upon the following judgments: -

1. **Arun Kumar and another vs. State of Punjab and another; 2006(3) RCR (Criminal) 793;**

2. **Parvinderjit Singh and another vs. State (U.T. Chandigarh) and another 2008(4) RCR (Criminal) 897;**

3. **Inder Mohan Goswami vs. State of Uttaranchal, 2007 (4), 3288;**

4. **Arnesh Kumar vs. State of Bihar and another 2014(3) RCR (Criminal) 527 (SC).**

Learned State counsel, on instructions from SI Mohinder Singh, submits that the investigations, till date, have revealed that the petitioner fraudulently accepted money from the complainant and refused to get the sale deed registered in his favour. The petitioner's intentions have been found to be dishonest even at the time he accepted about Rs. 67 lakhs from the complainant and this was clear from the fact that even prior to the acceptance of Rs. 67 lakhs from the complainant on 09.09.2013, this very land had been agreed to be sold by him to one Samita, from whom he had also received the full sale consideration. Investigations had further revealed that even after the agreement to sell with the complainant and having accepted about Rs. 67 lakhs from him, the petitioner, through another agreement to sell dated 11.11.2014, agreed to sell 1000 square yards of land, which included the land already agreed to be sold to the complainant, to one Dharmender son of Mahender Singh. From Dharmender also, the petitioner accepted the entire sale consideration. Learned State counsel further submitted that the investigations, till date, have further revealed that the petitioner had fraudulently accepted payments in pursuance to agreements to sell from at least five other persons namely Bhagwan, Khushpal, Krishan Pal, Rajbir and Anand and in their cases also, he had not honoured his promise to get the sale deeds registered in their favour. He had also refused to return their money. The investigations had revealed that till date, from the afore-noted transactions, the petitioner had pocketed about Rs. 3.5 crores. It is, thus, submitted that the aforesaid repeated acts on the part of the petitioner reveal that at the time of acceptance of the money from each of the vendees named above, the petitioner did not have any intention of honouring his part of the promise and thus, his acts can only be termed as fraudulent. Rather, the repeated acts on the part of petitioner go on to show that he is a habitual scamster and that by the time the investigations are complete, it would not be surprising, if the petitioner is found to be indulging in more of such acts, as noted above.

As noticed earlier, the petitioner denies even entering into an agreement with the complainant. In fact, a specific averment in this regard has been made in paragraph 9 of the petition. In this regard, learned State counsel has submitted that in the course of investigation, the agreement entered into between the complainant and the petitioner was sent to Forensic Science Laboratory, Madhuban and as per the report received, the petitioner's signatures on the agreement tallied with the specimen signatures given by him. Therefore, it was submitted that the petitioner having not come to this Court with clean hands, does not deserve the grant of concession of anticipatory bail.

The issue of delay raised by learned counsel for the petitioner is also countered by learned State counsel by submitting that the agreement in question is dated 12.12.2013 and after the land covered under the afore referred agreement was again agreed to be sold by the petitioner to one Dharmender on 18.11.2014, the present FIR was lodged on 29.12.2014. Thus, there is no delay.

Through order dated 09.04.2015, on the submissions made by learned counsel for the petitioner, this Court had directed the State to investigate whether the complainant had the financial capacity to pay about Rs. 67 lakhs to the petitioner. In pursuance to such order, an affidavit of Ashok Kumar, IPS, Superintendent of Police, Sonepat was filed, in which it was stated that the complainant had Rs. 67 lakhs on the day he says that he paid this amount to the petitioner as before such date, he had sold a plot, which he owned, for Rs.49 lakhs and had borrowed Rs. 18 lakhs from a relative, who in turn, had withdrawn this amount from the account of his daughter. It was further found that the complainant, who was an agriculturist had the capacity to earn Rs. 15-20 lakhs per year.

It is the admitted position that in pursuance to the FIR in question, investigation by the police is still on as report under Section 173 of the Code has not yet been filed.

The investigation started on allegation of one instance of fraud by the petitioner. Till date, six instances have surfaced, which have revealed that the petitioner repeatedly has defrauded different persons by having agreed to sell his land to them, accepting money, but later, backing out of his promise. The investigations done till date show that the petitioner has dishonestly pocketed over Rs. 3.5 crores. It is further revealed that he has sold the same property to different individuals.

In the light of the above, I find merit in the submissions of the learned State counsel that there could be other similar dishonest acts on the part of the petitioner, for which his custodial interrogation would be necessary. Recovery of cash, copies of agreements to sell, receipts, if any, and other documents is also to be made from the petitioner. The exact scale and the extent of the scam at the behest of the petitioner is yet to be unearthed. How many persons in all he had duped needs further probe, especially when these transactions have been entered into in cash.

The judgments cited by the senior counsel for the petitioner have been gone into. They do not support the petitioner's case.

In Arun Kumar's case (supra), the FIR was registered on the basis of an application submitted by the complainant therein with the allegations that the accused had entered into an agreement with the complainant to sell the property which formed the subject matter of the agreement for Rs. 23,95,000/- out of which Rs. 6 lakhs had been received by the accused as earnest money. It was further agreed that the sale deed would be executed on or before 20.08.2001. However, on that date, the vendors did not appear before the Sub Registrar, Ludhiana. Later on the complainant found that the vendors had sold the land to some other persons. It is in the above facts that the petitioner therein had filed for quashing of the FIR.

This Court came to the conclusion that there was nothing on the record to show that from the very beginning of the transaction, there was any fraudulent intention on the part of the petitioners. Primarily for this reason, the FIR was quashed. The facts in Arun Kumar's case (supra) and the case in hand are entirely different. In the present case the investigations have revealed that the petitioner, prior to the agreement with the complainant, had agreed to sell this very land to one Samita and after the agreement with the complainant had agreed to sell the same land to one Dharmender. From all the three vendors, the petitioner received full and final payment, but in neither of the cases, the petitioner got the sale deed registered or returned the money. The investigations so far have revealed as many as five other instances, where the petitioner has acted in a similar fashion. Thus, Arun Kumar's case (supra) has no application to the present case.

Parvinderjit Singh's case (supra) was relied upon by learned counsel for the petitioner to submit that where the case hinges only on the documentary evidence, the petitioner should be granted the concession of anticipatory bail.

As noticed above, in the case in hand, recovery of cash, copies of agreements to sell and receipts, if any, are still to be made. Learned State counsel submits that the petitioner has joined the investigation but he never cooperated. Further, though the FIR was based on only one instance, the investigations so far have revealed five more dishonest acts on the part of the petitioner. There may be more as the investigation is still on. Parvinderjit Singh's case (supra), therefore, would not support the petitioner's case.

In Inder Mohan Goswami's case (supra), the Supreme Court has held that where the dispute is of purely civil nature, offence of cheating is not made out. As noticed above, the investigations in the present case reveal that the petitioner has acted with dishonest intention in not one but several cases. He has allegedly been consistent in such of his acts showing his dishonest intention. A huge amount of over Rs. 3.5 crores in cash has been alleged to have been pocketed by the petitioner in at least six different transactions.

Learned counsel for the petitioner has further relied upon the judgment in Arnesh Kumar's case (supra) to submit that where the offence alleged of carries a maximum sentence of 7 years or less, there should be adequate reasons for the arresting the accused. The facts noticed above, as also the reasons given by learned Additional Sessions Judge, Sonepat, in my opinion, constitute adequate reasons for the custodial interrogation of the petitioner.

In view of the above, I do not consider the present case a fit case for the grant of concession of anticipatory bail.

Dismissed.

It is, however, clarified that the opinion expressed by me above is only for the purpose of deciding the present petition. It is further clarified that the observations made above would not, in any manner whatsoever, influence the trial court during the course of the trial.

17.01.2017
shamsher

**[ DEEPAK SIBAL ]**
**JUDGE**

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