IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRL. MISC.No.M-27615 OF 2015 (O&M)
DATE OF DECISION : 18th DECEMBER, 2017

Sanjay Jain & others

…. Petitioners

Versus

U.T., Chandigarh

…. Respondent

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

* * * *

Present : Mr. J. S. Bedi, Senior Advocate with
Mr. S. S. Brar, Advocate for the petitioners.

Mr. Rajiv Sharma, Additional Public Prosecutor
for U.T. Chandigarh.

Mr. K. S. Khehar, Advocate for the complainant.

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A. B. CHAUDHARI, J.

The petitioners have filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.64 dated 23.02.2015 registered under Sections 406, 420, 467, 468, 471, 474, 341 & 120-B IPC at Police Station Sector 17, Chandigarh.

In support of the petition learned counsel for the petitioners vehemently argued that the nature of dispute, if seen from the FIR, will clearly show that the same is in the nature of business dispute amongst the directors of real estate company and after the dispute between the parties several allegations/counter allegations have been made against the petitioners in respect of forgery and fraud. Learned counsel for the petitioners then submitted that the petitioners have also lodged FIR against the complainant and the said FIR is also pending investigation. The dispute arose amongst the directors and as such the allegations have been made against each other. He then submitted that the matter has now gone before the National Company Law Appellate Tribunal, New Delhi (NCLAT) which has passed certain orders which are binding on the parties i.e. parties to the present petition also. The present petition is pending in this Court with interim order since August, 2015 and the petitioners have fully cooperated with the investigating machinery regarding the investigation and therefore, the interim order should be made absolute.

Per contra, the learned counsel for the U.T., Chandigarh has vehemently opposed the plea for anticipatory bail and submitted that the fraud and forgery committed with the complainant by the petitioners is not only limited to the extent of cheating the complainant but now it is seen that even the documents submitted to the income tax department were forged and fabricated by the petitioners and petitioner No.1 in particular who is Chartered Accountant.

The counsel for the complainant as well as U.T. Chandigarh then submitted that the petitioners, having tampered with the government documents, cannot be extended the relief of grant of anticipatory bail and prayed for dismissal of the petition.

Upon hearing learned counsel for the rival parties at length on number of dates and upon perusal of the record, essentially I find that the dispute between the parties is mixed, civil and criminal nature. Both the parties have filed FIRs against each other after the dispute arose between them regarding the running of a real estate company. As and when the matter was heard by this Court right from August 2015, various orders have been passed by this Court. The following litigation between the two rival parties in the company is also pending before the various Courts:

"(i) Civil suit No.5317 of 2014 now pending in the Court of Ms. Shilfa, Civil Judge (Jr. Division), Chandigarh for 30.07.2015.

(ii) Civil Suit No.5318 of 2014 now pending in the Court of Ms. Shilfa, Civil Judge (Jr. Division), Chandigarh for 30.07.2015.

(iii) Company Petition No.43/ND/2015 filed by the petitioner against the complainant, pending before CLB for 07.07.2015.

(iv) Company Petition No.46 /ND/2015 filed by the complainant against the petitioner, pending before CLB for 22.07.2015.

The following petitions/complaints under Section 156(3) Cr.P.C. have also been filed and are pending:

(i) Complaint No.5354 of 11.08.2014

(ii) Complaint No.5564 of 23.08.2014;

(iii) Complaint No.5565 of 23.08.2014;

(iv) Complaint No.6961 of 24.09.2014;

(v) Complaint No.6962 of 24.09.2014 and

(vi) Complaint No.6963 of 24.09.2014

It is thus clear that the warring parties have taken resort to various remedies i.e. civil as well as criminal. Reading of the FIR in the present case also shows that both the parties are involved in multiple litigation. During hearing of the present matter by this Court at one stage the following order was passed on 04.09.2017:

> Heard learned counsel for the rival parties for quite some time.
>
> The crux of the matter is whether the petitioner-Kapil Aggarwal had prepared forged receipts Annexure R-2/4 along with CRM-21519-2017 in CRM-M-21843-2017.
>
> The counsel for the parties have been repeatedly showing letter from the Income Tax department in respect of the controversy regarding forgery/fabrication of the documents that no returns were filed by Sanjay Jain for the years 2011-12 and 2012-13.
>
> The question is whether the Income Tax Department issued those two receipts or not and if they were not issued whether they could be called fabricated documents or forged documents.
>
> The investigating officer is driving in wrong direction. At least to find out whether forgery/fabrication of the committed or not in respect of those two documents, he must get the concrete response from the Income Tax department regarding the issuance of the receipts by the department itself.
>
> The prosecution has wasted lot of time and therefore, last chance is given to the prosecution to make clear and concrete statement before this Court.

Adjourned to 19.09.2017.

Failure to make statement shall result in passing of further order qua the investigating officer."

After the said order was passed the counsel for the Union Territory submitted that now the Income Tax Department has taken cognizance about the alleged fabrication or forgery of the documents and whether or not the same are in connivance with the office staff of the Income Tax Department. Obviously, the Income Tax Department would take the legal action as would be advised. Insofar as the present petition is concerned, the petitioners have joined the investigation and they are on interim bail since the year 2015. The documents are also in the custody of the investigating officer and therefore, in my opinion there is no need that at such a late stage to revoke the order granting interim anticipatory bail.

In the result I think the interim order will have to be made absolute. Hence, I make the following order:

ORDER

(i) CRL. MISC.No.M-27615 of 2015 is allowed.

(ii) Interim order dated 27.08.2015 granting anticipatory bail to the petitioners, is made absolute.

18TH DECEMBER, 2017 **(A. B. CHAUDHARI)**
'raj' **JUDGE**

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*