

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2785 of 2017 (O&M)

Date of Decision: 05.07.2017

Vineet Yadav

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. A.K.Chahal, DAG, Haryana.

Mr. Abhimanyu Singh, Advocate
for the complainant.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No. 485 dated 13.10.2016 registered for offences punishable under Sections 420, 406, 467, 468, 471, 506 read with Section 34 of Indian Penal Code (for short 'IPC'), at Police Station Badshahpur, District Gurgaon.

Heard.

Case of complainant, in brief, is that on 29.04.2015, he had gone to purchase land in village Kishangarh, District Alwar (Rajasthan), where he met petitioner and his father Sultan Singh, who represented that they are owners of land bearing *khata* no. 52, *khasra* no. 56, 319, 363, 364, measuring 64 *bighas*. On 04.05.2015, they came to residence of complainant and gave *jamabandi* of aforesaid land. Complainant paid ₹1,25,00,000/- to accused and petitioner gave his affidavit/receipt and a cheque of ₹80 lacs bearing no. 000004 drawn on Kotak Mahindra Bank, Old

Delhi Road, Alwar towards surety. On verification from Revenue Department, it was found that Sultan Singh was not owner of the aforesaid land and they had fabricated the *jamabandi*. When the matter was brought to notice of petitioner and his father, they got surprised and agreed to return the money. They also asked the petitioner to take payment of ₹80 lacs of which cheque had been given to him. The cheque on presentation was dishonoured. The matter was again taken up with petitioner, who apprised complainant that he got the cheque dishonoured as he was not having sufficient money but asked him to again present the same in second week of October, 2015. When the cheque was again presented to bank, the same was dishonoured as the payment of this cheque had been stopped. Thereafter, the petitioner kept on putting off the matter of payment of the amount received by him and his father and ultimately made a phone call on 05.05.2016 and asked complainant to come to Balaji Hotel, Kishangarh Bas, Alwar to receive the payment. The petitioner went to Balaji Hotel, Kishangarh Bas, Alwar, where petitioner was not present. Sultan Singh, father of the petitioner, was present there and he threatened complainant with dire consequences in case he demands money from his son.

Learned counsel for the petitioner submits that there were business transactions between petitioner and complainant on account of which present FIR was got registered. For dishonour of cheque, no complaint under the provisions of Negotiable Instruments Act was filed. The affidavit of petitioner is dated 04.05.2015 while the stamp paper of this affidavit is dated 17.03.2014. Even if there was a sale transaction, it was a civil matter, which has been given a criminal tone. In support of his contention, learned counsel for the petitioner has relied on judgment of

Hon'ble Apex Court in case of **Arnesh Kumar vs. State of Bihar and another, 2014 (3) RCR (Criminal) 527** and has argued that petitioner cannot be arrested merely because the offence for which FIR has been registered is non-bailable and cognizable.

Learned State counsel and learned counsel appearing for complainant have argued that it is a case where petitioner has forged a *jamabandi* and entered into a sale transaction with complainant. Signatures of petitioner on the cheque of ₹80 lacs and affidavit are not denied. Even the police has got verified these signatures on affidavit and cheque and found the same to be of petitioner. There is nothing in petition about any business transaction between the parties. The dispute does not relate to a civil matter as complainant is not in a position to seek specific performance of agreement as the land in question is not in the name of petitioner or his father. It is a clear case of fraud and forgery. Recovery of sum of ₹1,25,00,000/- is to be effected from the petitioner. The police has also to investigate about the forgery of revenue record for which custodial interrogation of petitioner is required. The petitioner has joined the investigation but has not cooperated.

First contention of learned counsel for the petitioner is that there was a business transaction between the parties but when learned counsel for the petitioner was asked to refer to such plea in the petition filed by him, he could not point out any business transaction between parties or refer to any document showing that there was any such business transaction. This plea of learned counsel for the petitioner, as such, is discarded.

The affidavit (Annexure P-2) is dated 04.05.2015 but was prepared on the stamp paper issued on 17.03.2014. This affidavit was given

by petitioner to complainant. It has been stated that police got the signatures of petitioner on this affidavit verified and found the same as bearing his signatures. There is clear recital in this affidavit regarding the transaction of sale of 36 *bighas* of land owned by Sultan Singh for which amount was settled as ₹1,80,00,000/- out of which ₹1,25,00,000/- was paid as earnest money. The cheque and signatures on cheque of ₹80 lacs issued by the petitioner is also not denied and no explanation for issuance of cheque has come-forth. Non-filing of complaint under Section 138 of Negotiable Instruments Act on account of dishonour of cheque is not a factor which favours the petitioner in any manner. It is the option of complainant to see as to which legal remedy available to him is to be resorted. So far as plea of learned counsel for the petitioner that it is a civil matter, which has been given a criminal tone is concerned, the same also carries no weight as land agreed to be sold is admittedly not owned by petitioner's father. The citation referred by learned counsel for petitioner in case of *Arnesh Kumar (supra)* has also no application in the facts and circumstances of present case.

Keeping in view above facts and nature of offence, I find no equity in favour of petitioner so as to allow him benefit of grant of pre-arrest bail. Besides effecting recovery of money paid to him the police has also to investigate about forging of revenue record/documents for which custodial interrogation of the petitioner may be required.

This petition has no merit and the same is dismissed.

July 05, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No