

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-30123 of 2017.

Decided on:-18.08.2017.

Abhishek Shekhawat.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. R.S. Rai, Senior Advocate with
 Mr. Keshav Pratap Singh, Advocate
 for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.P.C. seeking directions to respondents No.1 and 2 to ensure that a fair and transparent investigation is conducted in case FIR No.396 dated 15.06.2016 under Sections 323, 406, 420, 467, 468, 471, 506 and 120-B IPC registered at Police Station Surajkund, District Faridabad.

Prayer has also been made to take action against the erring officials and other responsible persons, who are protecting the accused, as well as to protect the life and liberty of the petitioner at the hands of the accused.

Briefly stated, the aforesaid FIR was registered at the instance of the petitioner, who is claiming himself to be the director of M/s Soorya 21 Nextech Private Limited, Gurgaon and is dealing with the work of construction of buildings by taking contract from the builders at NCR,

Rajasthan, Bhiwadi. Considering the reputation of petitioner's company, M/s Rise Projects Private Limited, New Delhi approached the complainant-petitioner for construction of structure of a building 'Rise Sky Bungalow' at Sector 41, Faridabad. On 29.11.2013, one LOI (letter of intent) was issued by the complainant-petitioner and accused-respondents No.3 and 4, namely, Rishab Vashisth and Vaibhav Jain respectively, who are authorized representatives of M/s Rise Projects Private Limited, after having a word with both the parties. The complainant was supposed to construct total area measuring 2,56,135 square feet and total expenditure was settled at Rs.13,23,32,068/-.

On 26.12.2013, after preparation of the LOI, the complainant-petitioner was called by the accused-respondents No.3 and 4 in their office at M/s Rise Projects Private Limited and was apprised that the respondents have converted their company's name from M/s Rise Projects Private Limited to M/s Prakratee Akshay Enterprise Private Limited. They had further increased the area mentioned in the LOI dated 29.11.2013 from 2,56,135 square feet to 2,82,934 square feet and accordingly, the total expenditure was also increased from Rs.13,23,32,068/- to Rs.14,42,96,442/-. In addition to it, some more towers were decided to be constructed in the said area. After some time, while making alteration in the LOI, the ratio of payment was also changed by the accused for their benefit and to cause loss to the complainant.

The complainant-petitioner put huge machines and equipments on the site of project. Initially, the accused paid some amount, but later on, they stopped making payment. When the complainant requested them to sign

the contract and to make the remaining payment, the accused threatened him either to complete the work as per the LOI or be ready to face the consequences. Thereafter, the complainant stopped the work of construction.

On 10.09.2015, the complainant-petitioner was asked by the accused persons to come on the site to get the remaining payment. When the complainant along with one Netarpal reached there, it was found that the accused persons along with 20 antisocial persons were already present there. The accused persons threatened the complainant that if he or any of his employee would come on the site or try to take back the machineries lying there, they would be killed by the accused. The accused persons also forcibly obtained signatures of the complainant on various blank plain papers at that time on gun point. The accused persons also fabricated the Annual Tax Statement Form 26-AS. In this manner, the accused persons have caused wrongful loss to the complainant by playing fraud with him and have kept 50% payment of the constructed work with them with malafide intention. Besides this, the machineries and instruments installed by the complainant at the site by investing a huge sum were also kept by the accused persons.

Learned senior counsel for the petitioner has argued that taking into consideration the nature of offence, the case was transferred to Economic Offence Wing of district Faridabad. The accused did not cooperate and, rather, refused to make the payment or to hand over the machinery, which was lying in the premises of the accused persons.

He has further argued that respondent No.3-accused Rishab Vashisth had approached learned Additional Sessions Judge, Faridabad for

the relief of anticipatory bail in the aforesaid FIR, but his application was dismissed by learned Additional Sessions Judge vide order dated 23.06.2017 as there were serious allegations against the accused. In the said application for anticipatory bail, ASI of the Economic Crime Branch, Central Zone, Faribadad had submitted a status report to show that there is sufficient evidence against the accused persons for their arrest and efforts for their arrest are going on. Since the anticipatory bail was declined by learned Additional Sessions Judge, respondent No.3 had approached this Court for the relief of anticipatory bail and on 27.07.2017, the petition seeking anticipatory bail was dismissed as not pressed at that stage on the ground that the police is already in the process of filing the cancellation report.

He has further argued that surprisingly, in the status report dated 25.07.2017, the police has found that there is sufficient evidence against the accused persons, but at the time of withdrawal of the petition for anticipatory bail, it has been submitted that the police is already in the process of filing cancellation report. Thus, there is legitimate apprehension that under the influence of the respondents, the police may file cancellation report taking altogether different stand as referred in the earlier report dated 25.07.2017 produced before the Additional Sessions Judge, Faridabad at the time when anticipatory bail application of respondent No.3 was considered. He has further contended that in order to make fair investigation, the police should take into consideration the call records of the accused with the persons who are holding high offices and can adversely affect the investigation.

I have heard learned senior counsel for the petitioner and find that the apprehension shown by the petitioner is misconceived more particularly when the police is already investigating the matter. In the status report dated 25.07.2017, the concerned police official, who is associated with the investigation, has reported that there is sufficient evidence against the accused persons for their arrest and efforts are being made to arrest them. It is on the basis of this report that the anticipatory bail to petitioner No.3 was declined by learned Additional Sessions Judge.

No such material including call details has been placed on record by learned senior counsel for the petitioner to which this Court may have access. Even otherwise, when the FIR has already been registered and the police is conducting investigation, this Court cannot direct the police to investigate the case from a particular angle. Reliance in this regard can be placed upon ***D. Venkatasubramaniam and others Versus M.K. Mohan Krishnamachari and another 2009(4) RCR (Criminal) 318*** wherein it has been held by the Apex Court that when the police has registered a case and is conducting the investigation, the High Court cannot direct the police to investigate the case from a particular angle, arrest the accused and submit charge sheet. The relevant para No.21 of the aforesaid judgment reads as under:

“21. The High Court, in the instant case, did not even advert to the relevant facts. As stated in the order itself, it was more guided by the arguments made across the Bar that the police has not taken any steps to arrest the persons and seize the amounts involved in this case from the appellants though there is

no such factual foundation as such laid in the petition. It has altogether ignored the counter filed by the police that the police had already examined ten witnesses within a short span of time after the registration of crime and recorded their statements. The High Court, without recording any reason whatsoever, directed the police that it is obligatory on their part to record statements from witnesses, arrest, seizure of property and filing of charge sheet. It is difficult to discern as to how such directions resulting in far reaching consequences could have been issued by the High Court in exercise of its jurisdiction under Section 482 of the Code. The High Court interfered with the investigation of crime which is within the exclusive domain of the police by virtually directing the police to investigate the case from a particular angle and take certain steps which the police depending upon the evidence collected and host of other circumstances may or may not have attempted to take any such steps in its discretion. It is not necessary that every investigation should result in arrest, seizure of the property and ultimately in filing of the charge sheet. The police, in exercise of its statutory power coupled with duty, upon investigation of a case, may find that a case is made out requiring it to file charge sheet or may find that no case as such is made out. It needs no reiteration that the jurisdiction under Section 482 of the Code conferred on the High Court has to be exercised sparingly, carefully and with caution only where such exercise is justified by the test laid down in the provision itself.”

Merely because the petition for anticipatory bail filed by respondent No.3 before this Court was withdrawn on the ground that the police is filing cancellation report, is no ground to interfere in the ongoing investigation. Except that the anticipatory bail was withdrawn by respondent

No.3 on the premises that the police is preparing a cancellation report, no other material has been brought to the notice of this Court which may led to a conclusion that the police is not investigating the case in a fair manner.

Therefore, this Court does not find any merit in the present petition and the same is, accordingly, dismissed.

August 18, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No