IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35563-2016 &
CRM-M-37263-2016
Date of decision: March 10, 2017

Ripika Bedi & Anr. ... **Petitioners**

v.

State of Haryana ... **Respondent**

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

Present: Shri R.S. Rai, Sr. Advocate
Shri Manish Soni, Advocate for the petitioner(s).
Shri Surender Kumar, Assistant Advocate General, Haryana.
Shri C.S. Bakshi, Advocate for the complainant.

A.B. Chaudhari, J. (Oral):

By these two petitions, the petitioners seek the relief of grant of anticipatory bail in FIR No.186 dated 03.06.2015 Under Sections 420,465,467,468,120-B IPC registered at Police Station Sushant Lok, Gurgaon and FIR No.188 dated 04.06.2016, Under Sections 420,465,467,468,120-B IPC registered at Police Station Sushant Lok, Gurgaon.

In support of these petitions, Ld. Senior Advocate for the petitioners submitted that the petitioners had actually received an amount of Rs.50 lacs towards earnest money from the complainant. However, since the contract did not fructify, extensions were granted from time to time and lastly on 10.04.2015, a cheque was issued by the petitioners in the sum of Rs.1.25 crores, which was obviously given against the earnest receipt of Rs.50 lacs. The said cheque has bounced on 23.05.2015, for which criminal prosecution under section 138 of the Negotiable Instruments Act (hereinafter referred to as N.I. Act) has already been launched against the petitioners. He then submitted that the extensions were with the consent of the parties to the agreement and the cheque that was accepted was also with the consent of the complainant and that is why the same was put for clearance, which eventually had bounced. According to him, the complainant cannot be allowed to take two remedies namely one by filing complaint under section 138 of the N.I. Act and the other in the form of FIRs in question. He further submitted that dispute between them at any rate is of civil nature and therefore, the petitioners cannot be prosecuted in the criminal case under the Indian Penal Code. At any rate, the petitioners are entitled to grant of anticipatory bail particularly when the dispute is of civil nature.

Per contra, Ld. Counsel for the respondent/complainant vehemently opposed the petitions for the anticipatory bail and submitted that the complainant has already lost his Rs.50 lacs as stated by the petitioners and even the cheque amount of Rs.1.25 crores stood bounced. According to him, asking the complainant to wait for the result of the case Under section 138 of the N.I. Act on the ground that the petitioners cannot be asked to face the prosecution would be to put premium on the offences of cheating etc. committed by the petitioners. He then submitted that there is a clear cut criminal intention on the part of the petitioners and the petitioners not only collected an amount of Rs.50 lacs by way of earnest in as much as the subject property under the agreement was already agreed to be sold by them to others and had taken earnest money from others in huge sum. Not only that, finally the petitioners sold the subject property by registered sale deed in the sum of Rs.3 crores and 69 thousand to Sunil Khandelwal. He therefore submitted that the petitioners had clearly conspired to dupe not only the present complainant but also others by collecting from them huge money towards earnest money and finally giving nothing in return to them. He, therefore, submitted that the conduct of the petitioners is such that they do not deserve any relief of anticipatory bail and prayed for dismissal of these petitions.

Counsel for the State also opposed the petitions for the anticipatory bail.

I have heard Ld. Counsel for the rival parties at length. It is not in dispute, according to the petitioners also that for the subject property, an amount of Rs.50 lacs was received by the petitioners towards earnest money pursuant to the agreement dated 21.09.2012. It is also not in dispute that they had issued a cheque in the sum of Rs.1.25 crores which was never realized and was dishonored. It is also clear from the record that the petitioners had by registered agreement received an amount of Rs.1 crore on 09.05.2012 under that agreement from one Sarve Kriti Sharma and Rs.32 lacs on 26.08.2013 from said Sarve Kriti Sharma. Thus on the date, the petitioners received an amount of Rs.50 lacs i.e. on 21.09.2012, they had already received under the registered agreement an amount of Rs.1 crore from Sarve Kriti Sharma. This clearly shows the strong element of *mens rea* with the petitioners in cheating and conspiring to dupe the complainant. Not only that thereafter they entered into registered agreement in respect of the subject plot on 05.06.2013 and received an amount of Rs.60 lacs from Ravinder Singh Sehgal and an amount of Rs.1.30 crores from BDR Buildtech on 06.01.2014 under registered agreements and finally they sold by registered sale deed, as aforesaid to Sunil Khandelwal for the price of Rs.3 crores 69 thousand. It is, thus, clear that the petitioners have taken everybody for granted and indulged into the cheating the gullible investors. In result, I find that the petitioners do not deserve the relief of grant of anticipatory bail. Hence, I make the following order:-

O R D E R

i) CRM-M-35563-2016 & CRM-M-37263-2016 are dismissed.

ii) Interim orders are vacated.

March 10 , 2017. **[A.B. Chaudhari]**
kadyan **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No