IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M- 16394-2018 (O&M)
Date of decision: 28.05.2018

Jatinder Singh Walia .. **Petitioner**

Vs.

State of Punjab .. **Respondent**

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Bipan Ghai, Sr. Advocate with
Mr. Vishavjit S. Virk, Advocate
for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. Raj Kumar Gupta, Advocate
for the complainant.

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ARVIND SINGH SANGWAN, J.

CRM-18528-2018

Prayer in this application is for correction in the head note and the prayer clause by adding Sections 380/506 and 120-B IPC.

For the reasons stated in the application, the same is allowed and head not and prayer clause of the petition, Sections 380/506 and 120-B IPC are added.

Registry is directed to make necessary correction.

Application stands disposed of.

CRM-18894-2018

Affidavit of attorney of the complainant Jaswant Dass alongwith the synopsis and documents are taken on record.

Applications stands disposed off.

CRM-M- 16394-2018 (O&M)

Prayer in this petition is for grant of regular bail to the petitioner in case FIR No. 12 dated 30.06.2017, under Sections 409 and 420 of IPC, Police Station NRI, District Jalandhar.

Brief facts of the case are that the FIR was registered at the instance of one Jaswant Dass, who is an NRI, with the allegtions that the petitioner was introduced to him by one Amar Singh Chahal, who was posted as S.P. The petitioner alongwith said Amar Singh Chahal, induced the complainant to invest his money in properties so that he could make huge profits. Later on, the complainant sent two separate payments of $ 50,000 and $ 1,00,000 (Canadian) to the petitioner and the petitioner purchased house Nos. 133 and 162 in Lajpat Nagar, Jalandhar. Two plots were also purchased in Kapurthala. The complainant, thereafter, visited India and he was shown the properties and was assured that the same have been purchased in his name. Since, the complainant had reposed faith in the accused, so he never demanded the documents of title of the said properties. Later on, the petitioner/accused asked him that the said properties are to be sold, therefore, he should execute a General Power of Attorney in his name and on 05.03.2009, the complainant executed the General Power of Attorney in favour of the petitioner. It is further alleged in the FIR that later on the petitioner demanded more money for investment in business and the complainant through the petitioner sold a plot measuring 40 marlas for Rs. 1,32,00,000/- and sale proceeds were retained by the petitioner for investment purpose. Thereafter, the complainant further sold a plot measuring 52 marlas owned by Gurmail Singh, brother-in-law of the complainant and again the sale proceeds were retained by the petitioner for investment purpose. It is further submitted that when the complainant came back to India and demanded the documents of the properties, then the petitioner informed him that the properties have already been sold and he will pay him the sale proceeds. It is further stated in the FIR that the petitioner, his wife Rachna and daughter came to his house and after settling the accounts, they admitted that they owed an amount of Rs. 6,80,00,000/- to the complainant and assured that the payment will be returned. It is further stated that the said Amar Singh Chahal, S.P. also intervened and effected the settlement between them. Thereafter, the petitioner executed an agreement to sell in favour of the complainant qua his joint land in village Wadala Kalan, Tehsil Jalandhar in order to return the sum of Rs.6,80,00,000/-. Later on, the petitioner again demanded Rs.13,00,000/- and stated that he will sell his property and make the entire payment and the complainant paid said amount and an endorsement was made on the reverse side of the agreement to sell. Thereafter, on 04.08.2014, the petitioner alongwith his family approached the complainant and demanded an amount of Rs.2 lacs as it was required urgently and the complainant paid the said amount by making another endorsement on the reverse side of the agreement. The complainant has stated that when the amount was paid to the petitioner, the value of Canadian Dollar was equivalent to Rs. 35 now it has arisen to Rs. 55 and similarly the sister's husband of complainant Gurmail Singh Dubb has also given an amount of Rs.41,34,000/- . In January 2015, when the complainant came to India and demanded of his money back, the petitioner handed over to him post-dated cheques drawn on the ICICI Bank, Adarsh Nagar Branch, Jalandhar for Rs .2,50,00,000/-. The Cheques were dishonoured by the bank on account of 'insufficient funds', thereafter, the complainant by issuing a legal notice filed a criminal complaint under Section 138 of the Negotiable Instruments Act (for short 'the Act'). It is further stated in the FIR that the petitioner entered into a compromise with the attorney of the complainant and again issued two cheques dated 12.10.2015 for an amount of Rs. 1 crore each and paid a sum of Rs.50,00,000/- in cash and the complaint(s) filed under Section 138 of the Act was withdrawn. Thereafter, on 01.11.2015, again cheques were issued, however, were again dishonoured by the bank. It is, thus, stated that the accused owed to the complainant a sum of Rs.6,30,00,000/- and after adding interest, a sum of Rs.10,00,00,000/- was due to him. The complainant further stated that the petitioner had purchased properties in different parts of India and again a compromise was effected on 25.02.2016 with the attorney of the complainant and a sum of Rs.30,00,000/- in cash was given to the attorney of the complainant. It was agreed that in case, the cheques are not honoured, the petitioner will pay an amount of Rs. 6,00,00,000/- alongwith 2% interest per month. It is further stated in the FIR that on 25.03.2016, the date of payment was extended to 11.06.2016 and, therefore, the cheques were issued in favour of the complainant were again dishonoured.

The complainant lastly alleges in the FIR that the accused is threatening to physically eliminate him by using his connections with the police and has cheated him and has committed the offence punishable under Section 409 of IPC by committing criminal breach of trust.

Counsel for the petitioner has submitted that even if it is admitted that the petitioner has liability to pay a sum of Rs.6,80,00,000/- to the complainant, the complainant has right to get the sale deed executed in terms of the agreement to sell, as such, an amount cannot be paid in cash. Counsel for the petitioner further submits that the petitioner is in judicial lock-up since 21.02.2018. It is further argued that the complainant, instead of seeking a specific performance of the agreement to sell, is compelling the petitioner to return the amount by giving a money dispute, colour of criminal litigation.

Counsel for the petitioner further submits that as per agreement to sell dated 16.05.2014 (Annexure P2), the petitioner has agreed to sell his land measuring 12 kanal 11 marla for total consideration of Rs.6,70,00,000/- as full and final settlement and at the time of the said agreement, the petitioner has received a sum of Rs.5,65,00,000/-. The complainant, later on, made another payment on 14.05.2014 and 14.08.2014 while seeking extension of the sale deed by making endorsements on the back side of the agreement to sell.

Counsel for the petitioner further submits that with regard to dishonour of the 6 cheques mentioned in the FIR, the complainant has already availed his remedy under the Act by filing a complaint under Section 138 of the Act and the same is pending and, therefore, the present FIR is otherwise not maintainable. Counsel for the petitioner, lastly, argued that the petitioner is not a previous convict; the challan has already been presented before the trial Court and the conclusion of the trial will take long time as the offences are triable by the Court of Magistrate.

Learned State counsel, on instructions from Investigating Officer and assisted by counsel for the complainant, has opposed the prayer for bail on the ground that amount involved in the FIR is huge and further inquiry is pending.

The learned State counsel has submitted that on the complaint given by the complainant, further inquiry is going on and son of the petitioner is also nominated as one of the accused and his arrest is yet to be effected.

Counsel for the complainant has submitted that the police, under the influence of aforesaid Amar Singh Chahal, presently posted as Inspector General of Police, Patiala, had not registered the FIR for a long time and only after the complainant filed CRM-M-1274-2018, the present FIR was registered**.** Counsel for the complainant has relied upon the synopsis submitted by him and as per the synopsis, the following objections were taken:-

"*Year 1999-2009 Amar Singh Chahal the SP Jalandhar now IG Punjab Police developed close relation with complainant and started visiting Canada and stayed at the house of the complainant and took in the confidence for investment in India. Amar Singh Chahal introduced Jatinder Singh Walia, Rachna Walia, Ridham Walia in March 2009 to the complainant at his official residence when he visited India and compel him to do investment with these peoples by taking complainant in confidence.*

April 2009 to April 2011 *The complainant sent 690194 Canadian Dollar and received 25000 Canadian Dollar back from accused.* ***Copy of e-mail of money transaction dated 8th and 11th May, 2013 are attached (Page 1-2).***

05-03-2009 *Complainant executed General Power of Attorney in favour of accused registered in the office of Sub-Registrar Jalandhar-I, Vasika No. 13977 dated 05-03-2009,* ***copy of which is attached (Page 3-5).***

17-09-2009 *Complainant had taken Rs.7,55,000/- from her sister Kaushalya Dab who had maintained NRI Account No. 2099743000997 in the name of Kaushalya Devi and loan of Rs.29,00,000/- from Gurmail Dab Account No. 2099743000988 in the name of Gurmail Dab, in Canara Bank, Branch Jalandhar and the money transferred in the account of Jatinder Singh Walia and now these amounts are become Rs.11,00,000/- against Kaushalya Dab and Rs.48,26,000/- against Gurmail Dab.* ***Copy attached (Page-6).***

01-10-2009 *Second Power of Attorney executed by complainant, his brother Rachpal Dass and Surinder Pal Dass in favour of accused Jatinder Singh Walia in Canada which was embossed in the office of Commissioner Jalandhar vide No.3206 dated 13-10-2009 regarding property of 40 Marlas in Basti Babakhel.* ***Copy attached (Page 7-8).***

23-07-2010 *Jatinder Walia (accused) sold plot measuring 40 Marlas by using power of attorney in favour of his father named Gurbax Singh vide two separate sale deeds Vasika No. 2784 of 5 Marlas at the price of Rs.24,75,000/- and Vasika No.2785 of 1 Kanal 15 Marla at the price of Rs.28,90,000/-. The second registry intentionally executed at a lower price to play fraud with complainant. Infact the total sale price becomes Rs.1,98,00,000/- which is the market price of the land. If the 5 marla land is of Rs.24,75,000/- then the 40 marla land is equal to Rs.1,98,00,000/-.* ***Copies attached (Page 9-30).***

29-12-2010 *Accused obtained the power of attorney of complainant's sister Kaushalya Dab and her husband Gurmail Dab, which is executed in Canada and embossed in the office of Commissioner Jalandhar vide Serial No. 4497 dated 07-01-2010.* ***Copy attached (Page 31-33).*** *After that accused sold complainant's sister and her husband's plot of 52 marlas situated at Basti Danish Mandi Jalandhar at the rate of Rs.78,000/- per marla, which becomes total amount of Rs.40,56,000/-.*

Jan.2012 to May 2013 *Kaushalya Dabb and Gurnam Dabb sister and brother-in-law of complainant got transferred about 25,00,000/- through western union and bank on the name of Jaikaran Walia s/o Jatinder Walia. Detail is as under:*

26-01-2012 16500 Canadian Dollar transferred from CIBC bank to the account of Jaikaran Walia in

Dubai.

08-03-2012 10030 Canadian Dollar.

22-09-2012 5354 US Dollar through Western Union.

19-05-2013 553147 US Dollar through Western Union.

11-05-2013 5437.56 US Dollar through Western Union.

25-05-2013 5500 US Dollar through Western Union.

Receipts are attached (Page 34-39).

16-05-2013 *Accused admitted liability and as Guarantee of Rs.6,80,000/- accused executed an agreement of land of 12 Kanal 11 Marlas in the present of witnesses.* ***Copy attached (Page 40-47).***

14-05-2014 *Complainant again gave Rs.13,00,000/- to the accused. Details of amount has written at the back side of agreement.*

14-08-2014 *Complainant gave Rs.2,00,000/- to the accused, it was also wrote in the back side of agreement in the accused handwriting.*

17-01-2015 *In lieu of liability of Rs.6,80,00,000/-accused has given postdated cheques bearing No.722666 dated 03-04-2015 of Rs.1,00,00,000/-, cheque bearing No. 722667 dated 03-04-2015 of Rs.1,00,00,000/-, cheque bearing No. 722668 dated 03-04-2015 of Rs.50,00,000/-, cheque bearing No. 722669 dated 31-7-2015 of Rs.1,00,00,000/- cheque bearing No. 722670 dated 31-7-2015 of Rs.1,00,00,000/-, cheque bearing No. 722672 dated 02-01-2016 of Rs.100,00,000/- and cheque bearing No. 722675 dated 2-1-2016 of Rs.30,00,000/- all the cheque drawn on ICICI Bank, Adarsh Nagar Branch, Ground Floor, Sayal Chambers, Adarsh Nagar, Jalandhar out of account No.027301503054.*

22-06-2015 *Complainant presented Cheque No. 722666, 722667 and 722668 in Punjab and Sind Bank, RCC Branch, Jalandhar for the amount of Rs.2,50,00,000/-. All cheques were returned on 23-06-2015 with remarks "Funds Insufficient".*

29-07-2015 *Complainant filed complaint under Section 138 of Negotiable Instruments Act through his attorney Karan Sachdeva, Advocate in the Court of Illaqa Magistrate, Jalandhar.*

22-08-2015 *Then on 22-08-2015 First compromise was effected between the accused and complainant's attorney. In this compromise accused had issued new cheques 724048 and 724049 dated 22-10-2015 amounting to Rs.1 Crore each and made a payment of Rs.50 Lac in cash.* ***Copy attached (Page 48-49).***

24-08-2015 *Complainant withdraw the complaints from Illaqa Magistrate.* ***Orders attached (Page 50-52).***

30-10-2015 *As per the request of accused, second compromise/affidavit dated 30-10-2015* ***(copy attached- Page 53-55)*** *was effected and in this compromise Cheque No. 722669 and 722670 replaced by Cheque No. 724072 and 7240733 dated 01-11-2015. Complainant was already in possession of cheque No. 724048 dated 22-10-2015 of amounting Rs.1 Crore, cheque No. 724049 dated 22-10-2015 of Rs. 1 Crore, cheque No. 724072 dated 01-11-2015 of Rs.1 Crore, cheque No. 724073 dated 1-11-2015 of Rs.1 Crore, cheque No. 722671 dated 2-1-2016 of Rs.1 Crore, cheque No. 722672 dated 2-1-2016 of Rs.1 Crore and cheque No. 722675 dated 2-1-2016 of Rs.30 Lacs, were accepted by accused.*

19-01-2016 *Cheque No. 724048 and cheque No.724049 dated 22-10-2015 of Rs.1 Crore each presented by complainant's attorney through complainant account in Punjab and Sind Bank in Jatinder Singh Walia account, RCC Service Branch, Jalandhar on 19-1-2016, but the same was returned by the Banker of accused on 20-01-2016 with Remark No.5- Kindly Contact Drawer/Drawee Bank and present again.*

28-01-2016 *On the asking of Jatinder Singh Walia complainant's attorney presented both the cheques jointly which were returned by bank with Remarks No. 31 'Instrument Outdated/Stale and with Remarks 'Funds Insufficient'.*

19-01-2016 *Complainant presented cheque No. 724072 dated 1-11-2015 of Rs.1 Crore, cheque No. 724048 dated 1-11-2015 of Rs.1 Crore, cheque No. 722671 dated 2-1-2016 of Rs.1 Crore, cheque No. 722672 dated 2-1-2016 of Rs. 1 Crore and Cheque No. 722675 dated 2-1-2016 Rs. Thirty Lacs total amounting to Rs.4 Crore 30 lacs, presented in the bank and returned with Remarks No.1 'Funds Insufficient'.*

25-02-2016 *Complainant filed complaint before NRI Commission, Punjab against Jatinder Singh Walia and his son Jai Karan Walia, because Jai Karan Walia sent threatening message through mediators to the complainant. Again a third compromise* ***(copy attached Page 56-58)*** *was executed between Jatinder Singh Walia and Rachna Walia and complainant through attorney. As per compromise Jatinder Singh Walia had issued new cheques in place of old cheques. New cheques bearing No. 001793, 001794, 001795, 001796, 001797 and 001798 dated 25-3-2016 amounting to Rs.1 Crore each in favour of complainant and Rs.30 lacs in cash was paid to complainant through power of attorney Karan Sachdeva and the case was withdrawn before the NRI Commission vide order dated 25-02-*

2016 ***(copy attached- Page 59).*** *Accused himself appeared in Commission and submitted compromise by accepting liability.*

11-06-2016 *Accused by giving in writing on back side of compromise dated 25-02-2016* ***(copy attached- Page 60)*** *issued new cheques in place of old cheques No. 001803, 001804, 001805, 001806, 001807, and 001808 of Federal Bank, Jalandhar, all cheques are dated 31-07-2016 and all amounting to Rs.1 Crore each.*

22-08-2016 *Complainant presented all the above mentioned new cheques in bank but the same was returned by back with remarks-Funds Insufficient.*

05-09-2016 *Complainant sent a legal notice regarding above mentioned cheques.*

03-10-2016 *Complainant filed a complaint u/s 138 of NI Act before Court of Illaqa Magistrate regarding above mentioned cheques. Accused summoned and under trial in Court.*

October-Nov., 2016 *Accused Jatinder Singh Walia, her wife Rachna Walia has stolen cheques and other documents from the house of complainant situated at Model Town Jalandhar.*

18-01-2017 *Accused Jatinder Singh Walia sent legal notice of 7 cheques through his Advocate to the complainant by saying that these cheques have been given to him by complainant's earlier power of attorney holder Karan Sachdeva Advocate.*

14-02-2017 *Karan Sachdeva Advocate has given affidavit that he had never given any cheque to Jatinder Singh Walia.* ***Copy attached (Page 61-62).***

18-02-2017 *Jatinder Singh Walia filed complaints u/s 138 of N.I.Act against Jaswant Dass before the Ld. Judicial Magistrate 1st Class, Jalandhar.*

19-04-2017 *Handwriting Forensic Expert vide its report dated 19-04-2017 found that the signatures on the cheques do not match with signatures of the complainant.* ***Copy attached (Page 63-73).***

25-04-2017 *Jaswant Dass filed petitions before the Hon'ble High Court for quashing of complaints and summoning orders. The Hon'ble High Court vide order dated 25-04-2017 stayed the proceedings before the Ld. Trial Court, by considering the facts but till date accused has not filed any reply.* ***Stay order and latest order are attached (Page 74-75).***

30-06-2017 *FIR No. 12 dated 30-06-2017 has been registered under Section 409 and 420 IPC against Jatinder Singh Walia at P.S.NRI City, Jalandhar. Investigating Officer recommended Section 380,467,468 IPC also.*

15-01-2018 *That the complainant filed CRM-M-1274 of 2018 in the Hon'ble High Court in which notice of motion was issued in 15-01-2018 to the respondent. After the notice of motion SIT was completed the enquiry.* ***Copy of petition is attached (Page 76-88).***

05-02-2018 *S.I.T in which two members are IPS Officer, has given its report on 05-02-2018* ***(copy attached- Page 89-97)*** *in case FIR No. 12 dated 30-06-2017, in which Officers have conducted enquiry and added Section 380,506,120-B and also added the name of Jai Karan Walia as an accused in the above said FIR. Complainant never came back to India since January, 2016 till December 2017. That it is proved fact that complainant never issued any cheque to the accused.*

2017-2018 *That the accused is habitual offender. There some other cases which have been pending against the accused.* ***Orders of that cases are attached (Page 98-109).”***

In reply, learned Senior counsel for the petitioner submitted that a perusal of synopsis submitted by complainant itself shows that petitioner/accused and complainant are having long standing business transactions which culminated into an agreement to sell and instead to resorting to get the sale deed, the petitioner is involved in present FIR.

After hearing learned counsel for the parties, I find merit in the present petition.

It is the own case of the complainant that from the year 1999 till 2009, he was well acquainted with the aforesaid Amar Singh Chahal, S.P. and they used to stay at each other house in India and Canada and in March 2009, the petitioner alongwith his wife and daughter were introduced to the complainant and they asked him to do investment for the purpose of purchasing properties. As noticed above, from April 2009 till June 2016, the petitioner and the complainant were dealing with each other regarding sale and purchase of the properties and the complainant has sent the amount for the purchase of properties as detailed in the aforesaid synopsis. Therefore, for the purpose of deciding the bail application, it is difficult to hold that the petitioner has committed a criminal breach of trust as, for a long period of 08 years, the petitioner and the complainant were dealing with each other as partners in financial and business transactions. A perusal of the FIR shows that the complainant in the intervening period was regularly visiting India and could very well verify the documents regarding title of the properties purchased by him through the petitioner and in the absence of the same, cannot fix responsibility under Section 409 IPC without getting the accounts settled before the Civil Court/Competent Court of law as it is own case of the complainant that the agreement to sell was executed between them as a last transaction.

Without commenting anything upon the merits of the case, considering the fact that the petitioner is in judicial lock-up since 21.02.2018; he is not involved in any other case, the investigation is complete and challan against him is presented though further investigation is pending on the asking of the complainant, the offences are triable by the Court of Magistrate; conclusion of the trial will take sometime and in view of the judgment of Hon'ble Supreme Court in ***Manoranjana Sinh @ Gupta vs. Central Bureau of Investigation, 2017 (1) RCR (Criminal) 1025*** wherein the Hon'ble Supreme Court has held that the accused cannot be detained in judicial lock-up for unlimited period, the petitioner is directed to be released on bail subject to furnishing two sureties of heavy amount to the satisfaction of the trial Court/Illaqa Magistrate. The petitioner will also surrender his pass-port and furnish an undertaking that he will not leaving the country without prior permission of the Court.

It is further directed that in case, the petitioner is found involved in misusing the concession of bail or extending threat to the witness/complainant, it will be open for the prosecution to move an application for cancellation of bail.

It is further directed that in case any of the co-accused is arrested and during such investigation, the presence of the petitioner is required, he will appear before the Investigating Officer on receiving a notice in this regard and will cooperate in the investigation failing which the prosecution can apply for cancellation of bail.

Disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

28.05.2018
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No