**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No.M-16813 of 2018 (O&M)
Date of Decision: July 17, 2018**

Shri Girimon P.T.

......PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ankur Bansal, Advocate
for the petitioner (s).

Ms. Dimple Jain, A.A.G. Haryana.

Mr. Sanjay Vashisht, Advocate
for the complainant.

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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.784 dated 14.09.2017 registered for the offence punishable under Sections 406, 420, 506 read with Section 120-B of Indian Penal Code, at Police Station Suraj Kund, District Faridabad.

Heard.

As per the allegations in the FIR, in the year 2013 complainant met the petitioner, who is an Architect from Maharashtra and engaged him for preparing plan of his house. The petitioner represented that he was making a resort at Khandala, Maharashtra and was in dire need of money. He asked the complainant to advance him loan of ₹30 lakhs and promised to pay the same with interest @ 2% per month. Complainant paid this amount to the petitioner, who paid him some amount due to him towards interest only. When the loan amount was demanded, petitioner apprised the complainant that he had applied for bank loan and would return his amount on clearance of the same. He also borrowed BMW car of petitioner bearing registration No.HR-51AN-0777 with promise to return the same after a month or to buy the same. The car, which was entrusted to the petitioner in utmost faith and trust, was not returned. The petitioner then introduced Ms. Dipti Mahipal and represented that they both are Directors of M/s Cogent Enterprises Limited. They proposed the complainant and his friend Abhay Raj to invest a sum of ₹90 lakhs in construction of his 3 studios in their resort for which they will pay ₹45,000/- per month as rental. Thereafter, in the year 2014, they represented that they were constructing Villas on plots No.1 and 2 in their resort and by selling the Villas, they will earn profit of around ₹2.5 crore. Complainant and Abhay Raj invested ₹80 lakhs on which the petitioner agreed to pay interest @ 2% per month. Even after lapse of about six months, the Villas were not constructed and complainant on inquiry came to know that they have sold the plots to one person namely Tony Dhabawala. When the complainant and his friend met the petitioner and asked him to settle the dispute, he calculated the dues on a piece of paper in his own hand-writing and issued two cheques, which when presented to the bank got dishonoured. Tony Dhabawala has also initiated legal proceedings against the petitioner. Thereafter, the petitioners threatening the complainant and his friend.

Learned counsel for the petitioner has argued that firstly, the entire deals with the complainant and his friend were conducted in

Maharashtra. They were creating story of advancement of loan of ₹30 lakhs without disclosing the date and time. Even otherwise, the entire payment of complainant were made through cheques/bank deposits and were reflected in the account books for which the petitioner is ready to sit and settle. A sum of ₹19,10,000/- is due to be paid to the complainant which the petitioner is ready to pay through demand draft. A Memorandum of Understanding between the parties was entered into, which has since been cancelled and the remedy available in the matter of Memorandum of Understanding is to approach the Arbitrator. The entire dispute between the parties is civil in nature, which has been given criminal colour by misuse of process of law.

Learned counsel for the complainant has argued that the amount of ₹30 lakhs was paid to the petitioner at Faridabad. Memorandum of Understanding was also signed at Faridabad. Complainant has explained the payment made to him in his reply. The intention of petitioner was to cheat the complainant and he had also executed agreement in favour of complainant regarding the property, which was not owned by him. He also issued the cheques fully knowing that there is no balance in his account.

As per the complainant, initially a sum of ₹30 lakhs was paid to the petitioner. However, there is no documentary evidence regarding this payment, which has been allegedly made in cash. It was for the Investigating Officer to find the date of that payment and the source from which it was made. Remaining payments are reflected in the account books, which can be settled as per Memorandum of Understanding. Payment of ₹10 lakhs has been made to the complainant by draft. As per submission of learned counsel for the petitioner, he is also directed to pay another sum of ₹19,10,000/- to the complainant through demand draft within a period of four weeks of this order.

In view of the above discussion, I am of the opinion that custodial interrogation of the petitioner is not required, which is mostly based on documentary evidence. This petition is allowed. Petitioner is directed to surrender before the police and join investigation within two weeks. In the event of his arrest being required, he shall be released on anticipatory bail, on his furnishing bonds to the satisfaction of Arresting Officer, subject to the terms as follows:-

(i) that the petitioner shall make himself available for interrogation by the police as and when required;

(ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that the petitioner shall not leave India without the prior permission of the Court;

(iv) that the petitioner will seek regular bail on the presentation of challan in Court.

In case, the petitioner fails to pay the amount of ₹19,10,000/- as per the undertaking of learned counsel for the petitioner, the order allowing him anticipatory bail shall stand revoked and the Investigating Officer/Court shall be at liberty to take him in custody.

(SURINDER GUPTA)

July 17, 2018 **JUDGE**

Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***