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

1. CRM-M-19494-2018

Lokesh **...Petitioner**

Versus

State of Haryana **...Respondent**

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2. CRM-M-35013-2018

Atul Kumar Shukla **...Petitioner**

Versus

State of Haryana **...Respondent**

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3. CRM-M-24758-2018

Anil Kumar **...Petitioner**

Versus

State of Haryana **...Respondent**

Date of decision: 17.09.2018

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. N. S. Shekhawat, Advocate
for the petitioner in CRM-M-19494-2018.

Mr. Kamal Sharma, Advocate
for the petitioner in CRM-M-35013-2018.

Mr. Abhilaksh Grover, Advocate
for the petitioner in CRM-M-24758-2018.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. R. S. Rai, Senior Advocate with
Mr. Sumit Jain, Advocate &

Mr. Sushil Jain, Advocate
for the complainant.

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ARVIND SINGH SANGWAN, J. (Oral)

1. This common order shall dispose of above noted three petitions as they arise out of the same FIR.

2. The first two petitions, i.e CRM-M Nos. 19494 & 35013 of 2018, have been filed by petitioners Lokesh and Atul Kumar Shukla, respectively, seeking grant of regular bail, whereas third petition, i.e. CRM-M-24758-2018, has been filed by petitioner Anil Kumar seeking grant of anticipatory bail; in case FIR No. 520 dated 04.12.2016, registered under Sections 406, 420, 120-B and 180 of the IPC at Police Station Bhupani, District Faridbad. However, for the sake of brevity, the facts are noticed in CRM-M-19494-2018, filed by petitioner-Lokesh.

3. Briefly, the allegations in the FIR, got registered on the application of complainant Subhash Chaudhary, against M/s Jai Ambey Infraestate Pvt. Ltd. and its directors Anil Kumar, Lokesh and Atul Kumar Shukla, petitioners herein are that the complainant was owner and in actual physical possession of the land measuring 33 Kanals 7 Marlas, situated in revenue estate of the village Bhatola, Sub Tehsil Tigaon, District Faridbad, as detailed in the FIR, and had sold the said land to accused persons by executing a sale deed through his General Power of Attorney Sh. Zile Singh, vide sale deed dated 15.07.2015 (Annexure P-3), registered in the office of Sub-Registrar, Tigaon. It is further stated in the FIR that the sale deed was executed in favour of accused-company through its authorized person i.e. accused Anil Kumar and the total sale consideration shown in the

sale deed is ₹6,25,31,500/- through 31 cheques as detailed in the aforesaid sale deed. It is further alleged that the cheques were duly signed by accused Anil Kumar and Lokesh, being Directors of the company, and as per understanding with the accused, the complainant deposited the said cheques in his account in Axis Bank, however, the same were returned/dishonoured with the remarks “account closed”. It is alleged that the accused persons, in conspiracy with each other that the chques could not be honoured on their presentation, have intentionally closed the account for causing wrongful loss to the complainant and in fact, no amount was ever paid to the complainant as sale consideration of the sale deed dated 15.07.2015 by the accused persons. It is further alleged that on the basis of the said sale deed, now the accused persons are trying to transfer/sell the land in dispute and in this way, they have committed fraud with the complainant.

4. Mr. Shekhawat, appearing on behalf of petitioner Lokesh, argued that the petitioner is in judicial custody since 10.04.2018; investigation is complete and the petitioner is no more required for any further investigation.

5. It is further argued that in fact M/s Jai Ambey Infraestate Pvt. Ltd. came into existence on 21.03.2015 with four directors, namely Seema Aggarwal, O. P. Aggarwal and Narinder Aggarwal, and later on, on the retirement of one director, co-accused Anil Kumar was appointed as a Director and on retirement of another director, petitioner Lokesh was appointed as a Director on 07.05.2015.

6. Learned counsel for the petitioner has submitted that as per the sale deed dated 15.07.2015 (Annexure P-3), executed by the complainant, there is no date of the cheques, which were given with an understanding of

the complainant that as and when the land is further sold, the payment will be made. It is further argued that on 09.10.2015, M/s Jai Ambey Infraestate Pvt. Ltd., through petitioner Anil Kumar, had sold some of the land in dispute for ₹6,60,000/- in favour of one Manish Kumar and another sale deed was executed, through Anil Kumar, for ₹45,94,000/- in favour of one Mrs. Indresh. In the said sale deed, ₹40,94,000/- were given by way of cheques in favour of Anil Kumar and ₹5,00,000/- were paid in cash.

7. Mr. Shekhawat has further submitted that later on, petitioner Lokesh retired on 05.12.2015 and has relied upon his statements of account (Annexure P-4) to submit that he had transferred ₹30,40,000/- to M/s Jai Ambey Infraestate Pvt. Ltd. from his personal account and managed another amount of ₹16,50,000+₹11,00,000+₹9,00,000/- from his acquaintances to the account of M/s Jai Ambey Infraestate Pvt. Ltd. so that the payment of two cheques of ₹20,00,000/- each be made and consequently, an amount of ₹40,00,000/- was transferred to the account of the complainant through RTGS on 08.10.2015 as per account statement (Annexure P-4) to satisfy the sale consideration payable to the complainant. It is further sbumitted that on 04.12.2015, petitioner Atul Kumar Shukla was joined as Director and petitioner Lokesh had transferred his shares to Atul Kumar Shukla on 05.12.2015 itself by receiving an amount of ₹60,000/-. It is further submitted that during the tenure of petitioner Lokesh, only two sale deeds were executed for which he has already paid the amount of ₹40,00,000/- to the complainant and for the other sale deeds, the amount was received by co-accused Anil Kumar.

8. Mr. Shekhawat has heavily contested the details given in the

affidavit, filed by the Investigating Officer ASI Manoj Kumar, Economic Offences Wing, Central, Faridabad, to submit that in para No. 5 of this affidavit, the details of land, measuring 13 Kanals 15 Marlas and 20 sq. ft., vide its separate sale deeds, showing that certain amount was received by petitioner Lokesh is without any basis as there is no corresponding entry in the statement of account to prove the sale and the amount was in fact received by co-accused Anil Kumar alone and the Investigating Officer is favouring Anil Kumar. It is also argued on behalf of petitioner Lokesh that the Investigating Officer is now trying to implicate his brothers Naresh and Ravi, who were never the Directors of M/s Jai Ambey Infraestate Pvt. Ltd.

9. Mr. Shekhawat further submits that the complainant has admitted in the complaint, filed under Section 138 of the Negotiable Instruments Act, that the complainant is owner in possession of the land in dispute and also submits that even in civil suit filed by the complainant praying for decree of declaration with consequential relief of permanent injunction that the sale deed dated 15.07.2015, which was executed without passing of the final consideration, be declared as null and void and not binding upon his rights. It is submitted that even in this suit, the complainant is claiming that he is in actual physical possession of the land with a similar averment made in the FIR.

10. Learned counsel appearing for petitioner Lokesh though has tried to justify that the facts given in para No. 7 of the affidavit of the Investigating Officer are factually incorrect, however, this is a subject matter of trial.

11. Learned counsel appearing for petitioner Atul Kumar Sharma has submitted that the petitioner is a senior citizen and has retired as

Principal from a government job. It is further submitted that petitioner Atul Kumar Sharma joined as a Director of the said company and has in fact invested ₹1,00,00,000/- with the company and during his directorship, he has never executed any sale deed. It is further submitted that when the suit for declaration was filed and litigation started, on the representation given by co-accused Anil Kumar that he is unable to pay the amount, the petitioner got 8 Kanals of land by way of sale deed in favour of his daughter in lieu of the amount invested by him. It is also submitted that petitioner Atul Kumar Shukla is in judicial custody since 10.04.2018 and he is no more required for any further investigation as the challan against both the accused persons stands presented in Court.

12. It is submitted on behalf of petitioner Anil Kumar, who is praying for grant of anticipatory bail, that in fact petitioner Anil Kumar has acted as per the clause in the terms and conditions in the sale deed for executing the subsequent sale deeds as per the mutual understanding with the complainant. It is submitted that it was agreed between the Directors and the complainant that the cheques, which were mentioned in the sale deed, will not be presented, however, company will keep on making the payment subsequently by selling the land further to the purchasers. Learned counsel for the petitioner further submitted that a coordinate Bench on 01.06.2018, while issuing notice of motion in this case, has observed as under:

> **"Notice of motion for 4.7.2018.**
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> **Although this Court was not inclined to grant the interim protection to the petitioner but, the police is not able to trace him since December, 2016, therefore, in the meanwhile, the petitioner is directed to join investigation before the Investigating Officer. In the**

event of his arrest, the Arresting Officer would admit him to interim bail till the next date of hearing on his furnishing adequate bail and surety bonds to his satisfaction with bank guarantee of ₹10,00,000/- (Ten Lakhs only) . The petitioner is also directed to abide by all the conditions as envisaged under Section 438 (2) Cr.P.C.

Commissioner of Police, Faridabad is directed to look into the matter and if need be, can change the Investigating Officer."

13. Learned counsel for the petitioner submits that in pursuance of the above order, petitioner Anil Kumar has furnished the bank guarantee.

14. Learned counsel for petitioner Anil Kumar has further argued that nothing is to be recovered from the possession of the petitioner and his custodial interrogation is not required.

15. In reply, learned State counsel, on instructions from SI Manoj Kumar, as well as learned senior counsel, assisted by Mr. Sumit Jain & Mr. Sushil Jain, Advocates, appearing on behalf of the complainant, has opposed the prayer of the petitioners on the ground that the petitioners could not show that any sale consideration has passed while executing sale deed dated 15.07.2015. It is also submitted that during investigation, it has come that petitioner Anil Kumar, in the capacity of Director of M/s Jai Ambey Infraestate Pvt. Ltd., was managing its affairs and petitioner Lokesh, being a Director, executed two sale deeds before his retirement.

16. It is further submitted by learned senior counsel that both the accused persons, while executing the sale deed, as detailed in the affidavit of the Investigating Officer, had apportioned the amount. Learned senior counsel further submitted that in fact in the written statement filed by the

petitioners in the civil suit, it is denied that there was a recital in the sale deed that in the event of dishonour of cheque, sale deed will stand revoked or cancelled. Learned senior counsel has drawn reference to para No. 7 of the written statement, filed by the petitioners to the civil suit, where it is stated that the complainant (who is plaintiff in the civil suit) has no right, title or interest in the suit land, after execution of sale deed dated 15.07.2015 and in fact in para No. 8 of their reply, it is stated that it is the accused persons who are in possession of the land in dispute.

17. Learned senior counsel for the complainant has placed on record photocopies of certain agreement to sell to submit that petitioner Anil Kumar, by virtue of of the sale deed dated 15.07.2015, in the capacity of the Director of M/s Jai Ambey Infraestate Pvt. Ltd., has been creating third party rights by selling the land (on the basis of the agreement to sell) and receiving huge amount. Learned senior counsel has relied upon one of such agreements dated 23.09.2015, vide which, petitioner Anil Kumar, being a Director of M/s Jai Ambey Infraestate Pvt. Ltd., has sold 2 Kanals 9 Marlas of land for ₹46,00,000/- and received a sum of ₹20,00,000/- as earnest money from one Ved Parkash son of Dr. Karmveer, Village Tigaon, Tehsil Tigaon, District Faridbad. Learned senior counsel has also place on record another agreement to sell to submit that petitioner Anil Kumar is selling the land without there being any passing of sale consideration in favour of the complainant.

18. Learned senior counsel has further argued that the intention of the accused persons to commit the offence at the time of execution of sale deed is apparent on record. It is further submitted that petitioner Atul Kumar Shukla has himself stated that a plot was transferred in the name of his

daughter in lieu of money invested by him and, therefore, even this transfer has been made by petitioner Anil Kumar knowingly that he had not made any payment to the complainant.

19. Learned senior counsel has further argued that though the petitioners are claiming that the complainant is in possession of the land in dispute, however, they are disputing this fact before the Civil Court and by committing the offence of forgery and cheating, by drawing title from the illegal sale deed dated 15.07.2015, petitioner Anil Kumar has sold some part of the land to other persons through the agreements to sell.

20. It has further been argued by learned senior counsel that it has come on record that petitioner Lokesh was holding 50% share of the company, however, he has transferred his share in favour of petitioner Atul Kumar Shukla for a sum of ₹60,000/- only which shows his involvement.

21. After hearing learned counsel for the parties at length, I find merit in the petitions, filed by petitioners Lokesh and Atul Kumar Shukla seeking grant of regular bail, however, I do not find any ground to grant anticipatory bail to petitioner Anil Kumar, for the following reasons:

(a) The complainant had sold his 33 Kanals 7 Marlas of land for ₹6,25,31,500/- to M/s Jai Ambey Infraestate Pvt. Ltd. through its authorized person i.e. accused petitioner Anil Kumar by issuing 31 cheques, out of which, 30 cheques were of ₹20,00,000/- and one cheque was of ₹25,31,500/-. Undisputedly, the cheques were dishonoured by giving remarks "account closed" and, therefore, no sale consideration was passed in favour of the complainant while executing the aforesaid sale deed. Therefore, there are direct allegations against petitioner Anil Kumar, the signatory of the said sale deed on behalf of M/s Jai Ambey Infraestate Pvt.

Ltd., that he got the sale deed executed without paying the sale consideration and the allegations against petitioners Lokesh and Atul Kumar Shukla are that they are the signatories of the aforesaid cheques, as mentioned in the sale deed.

(b) The allegations against petitioner Anil Kumar further show that after execution of the sale deed, he was selling the land as Principal Director of the said company and was receiving the amount thereof. Out of the sale deeds, which are reflected in the affidavit of the Investigating Officer SI Manoj Kumar, petitioner Lokesh has been able to demonstrate from his account statement (Annexure P-4) that out of the payment in one sale deed dated 18.11.2015 for ₹45,94,000/-, in which an amount of ₹40,94,000/- were given by way of cheques in favour of Anil Kumar and ₹5,00,000/- were paid in cash. Petitioner Lokesh has also been able to demonstrate that an amount of ₹40,00,000/- was transferred to the complaint by way of RTGS for settling the sale consideration against this sale deed. Though it is claimed by petitioner Lokesh that he had deposited this amount in the account of M/s Jai Ambey Infraestate Pvt. Ltd., yet, it is to be decided during the course of trial whether this amount was deposited by the petitioner from his own account or not.

(c) Further allegations against petitioner Anil Kumar are that he has been executing sale deeds/agreements to sell in favour of other persons, being authorized person of M/s Jai Ambe Infraestate Pvt. Ltd., and has been receiving the amount thereof. Even in the aforesaid affidavit of the Investigating Officer, based on investigation, it is stated in para No. 7 that the amount of sale consideration arising out of sale deeds executed in favour of Manish, Indresh, Jai Prakash, Geeta Devi, Sujata and Shambhi Shukla was received by petitioner Anil Kumar which runs into crores of rupees. The Investigating Officer has further stated that later on, on the basis of the statement of Sunil Kumar, husband of the purchaser Sujata, it has come out that some amount was paid to petitioner Lokesh also. However, he is not cited as a prosecution witness in report under Section 173 Cr.P.C.

(d) Therefore, from the perusal of the FIR as well as from the investigation conducted so far and on the basis of the aforesaid affidavit of the Investigating Officer, it is apparent that petitioner Anil Kumar on the one hand has failed to pass over the sale consideration of ₹6,25,31,500/- to the complainant and on the other hand by drawing title from the said sale deed, he is selling the land to other persons and is collecting money.

22. The intention of petitioner Anil Kumar to cheat the complainant by alluring him to part away with his land measuring 33 Kanals 7 Marlas *prima facie* makes out an offence as no consideration against the said sale deed was passed to complainant. Hence, custodial interrogation of petitioner Anil Kumar is necessary to find out the sale deeds/agreement to sell executed by him in favour of various other persons, the amount received by him thereof and his statements of account etc. Hence, finding no ground to grant anticipatory bail to Anil Kumar, **CRM-M-24758-2018 stands dismissed.**

23. So far petitioners Lokesh and Atul Kumar Shukla are concerned, they are in judicial custody since 10.04.2018 and challan qua them has been presented and they are no more required for custodial interrogation and the offences are triable by the Court of a Magistrate and it will take some time in conclusion of the trial.

24. The role of petitioner Lokesh is distinguishable from petitioner

Anil Kumar who is the Principal Director of M/s Jai Ambey Infraestate Pvt. Ltd. and was dealing with the sale of land of the complainant directly and was receiving amount which is evident even as per the affidavit of the Investigating Officer. Similarly, petitioner Atul Kumar Shukla came in picture at a subsequent stage and, therefore, the allegations against him are not with reference to the execution of the sale deed, when the fraud was perpetuated by petitioner Anil Kumar.

25. Therefore, both the petitioners, Lokesh and Atul Kumkar Shukla, are entitled to grant of regular bail considering the fact that the investigation is complete; challan has been presented and they are not involved in any other case.

26. Accordingly, in view of the above discussion, CRM-M Nos. 19494 and 35013 of 2018 are allowed and petitioners Lokesh and Atul Kumar Shukla are ordered to be released on regular bail, subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate concerned.

27. Any observation made herein above is only for the purpose of deciding these bail applications and not on the merits of the case.

28. Petitioners Lokesh and Atul Kumar Shukla are further directed to join investigation in case they are required by the Investigating Officer while submitting challan against accused Anil Kumar.

September 17, 2018 **(ARVIND SINGH SANGWAN)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*