IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23544-2017 (O&M)
Date of decision: 26.03.2018

Ali Mohammed Azeez Madani

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Harsh Garg, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

Mr. V.K. Sachdeva, Advocate
for respondent No.2-complainant.

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ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.124 dated 31.12.2016 under Section 420 IPC, registered at Police Station Sarabha Nagar, District Ludhiana.

Brief facts of the case are that on a complaint given by Tajinder Vohra and Ashish Vohra, present FIR has been registered with the allegations that the complainants are running a business of boutique and complainant Tajinder Vohra came in contact with the petitioner, who got the clothes made from her for her daughter's marriage. It is further stated in the FIR that later on the petitioner induced the complainant to have partnership business for running the boutique at a large scale in big cities like Delhi and Mumbai and on such inducement, the complainant deposited certain amounts from 01.11.2014 to 17.10.2015 and she was assured that as and when the partnership papers are completed, the information qua opening of the stores in two metro cities will be given to the complainant. The complainant and her brother as and when contacted the petitioner, he assured that he will return the amount but failed to do so. It is further stated in the FIR that the petitioner has cheated the complainant by way of playing a fraud with her.

At the time of issuance of notice of motion on 08.08.2017, it was submitted on behalf of the petitioner that he is ready to repay the outstanding amount and return all the documents to the police showing investment of the money, which the complainant had given him and he was granted interim bail against his arrest. Later on, the petitioner on various dates sought time and thereafter, the matter was referred to the Mediation and Conciliation Centre of this Court on 20.09.2017. The petitioner along with his counsel appeared before the Mediation and Conciliation Centre on 15.01.2018 and a settlement was arrived at between the parties that the petitioner will pay the total amount of Rs.23 lacs, out of which the petitioner was to pay an amount of Rs.5 lacs as down payment by 22.02.2018 and the balance amount in monthly installments of Rs.50,000/- commencing from 01.03.2018 to 28.02.2021, by giving post-dated cheques, to be delivered on or before 22.02.2018.

In pursuance to the aforesaid settlement, the case was taken up on 19.02.2018 and it was listed for 28.02.2018 enabling the petitioner to hand over the payment of Rs.5 lacs as down payment. On 28.02.2018, on the request of learned counsel for the petitioner that he could not come present and make the payment, the case was adjourned for today i.e. 26.03.2018, by extending the time to hand over the demand draft of Rs.5 lacs.

Today, learned counsel for the petitioner submits that he has the instructions to say that the petitioner, under pressure, had entered into the settlement before the Mediation and Conciliation Centre of this Court and he wants to argue the case on merits.

Though notice of motion was issued on a limited point that the petitioner wants to settle the dispute and pay back the amount, yet the arguments on merits were heard.

Learned counsel for the petitioner further submits that as per the allegations in the FIR, the complainant had paid the amount to the petitioner on account of a partnership between them and therefore, it is a civil dispute and the complainant can resort to her legal remedy before the Civil Court. It is also stated that out of Rs.40 lacs, an amount of Rs.11 lacs was returned by the petitioner and therefore, the offence under Section 420 IPC is not made out.

In reply, learned State counsel, on instructions from ASI Avtar Singh and assisted by learned counsel for the complainant, submits that the petitioner with dishonest intention induced the complainant to part away with a huge amount of Rs.40 lacs for entering into a partnership and opening of the stores in Delhi and Mumbai cities. However, the petitioner neither provided any partnership papers to the complainant nor opened any store and thus, has played a fraud with her. It is further submitted that the petitioner could not produce on record any document to show that any partnership deed was ever executed between the parties on the inducement made by the petitioner, when the complainant paid the huge amount on different dates in his account.

Learned State counsel has further submitted that even during the investigation, the petitioner never replied to the questionaire put to him with regard to the documents or the investment made by him and has not cooperated in the investigation despite granting him sufficient time.

After hearing learned counsel for the parties, I find no merit in the present.

It is apparent from the FIR and not disputed by the petitioner that the complainant has deposited a huge amount with the petitioner on inducement given by him that he wants to do a partnership business with her for running the boutique in big cities like Delhi and Mumbai. However, later on, he backed out and neither prepared the partnership papers nor supplied any information to her regarding opening of the stores in Delhi and Mumbai. The petitioner never denied that he has not received the amount from the complainant, rather has failed to open the stores and return the money back and thus, he has duped the complainant of a sum of Rs.23 lacs on the pretext of making of investment of her money by opening the stores in Delhi and Mumbai.

Since the petitioner has failed to cooperate with the Investigating Agency and also enjoyed the concession of interim bail on the pretext that he is ready to settle the dispute with the complainant and even has backed out from the settlement arrived at between the parties before the Mediation and Conciliation Centre of this Court, where he has agreed to pay an amount of Rs.23 lacs in installments and has further failed to show his bonafide by paying the amount as per the mediation report, considering serious allegations in FIR, I find no ground to grant discretionary relief of anticipatory bail to the petitioner.

Dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

26.03.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No