

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**CRM-M-46186-2017 (O&M)**

**Date of decision:14.03.2018**

Sushil Kumar Sharma

... Petitioner

Vs.

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. Ashish Yadav, Additional Advocate General, Haryana.

Mr. Aditya Sanghi, Advocate for the complainant.

...

**TEJINDER SINGH DHINDSA, J. (ORAL).**

This order shall dispose of the instant petition filed under Section 438 Cr.P.C. seeking concession of pre-arrest bail to the petitioner in case FIR No.704, dated 06.09.2017, under Sections 406/420 IPC, registered at Police Station Civil Lines, Hisar, District Hisar.

FIR has been registered on the complaint of Kawal Nain Manocha.

Allegation against the petitioner are two fold.

First set of allegations is with regard to non performance of contractual obligations arising out of an alleged agreement to sell dated 07.03.2015 that was entered into between the parties pertaining to a residential built up property admeasuring 334.44 sq. yards situated in Urban Estate, Hisar.

The second set of allegations is with regard to misappropriation and fraudulent transfer of a sum of money approximately Rs.43 lakhs and

such transfer having been effected from the account of one M/s S.B. Logistics held in HDFC Bank and into the personal account of the petitioner held in Axis Bank.

Insofar as the agreement to sell dated 07.03.2015 is concerned, it has gone controverted that a civil suit for specific performance was instituted by the complainant on 13.10.2016. Counsel for the complainant does not rebut the contention raised on behalf of the petitioner that an application had been moved before the trial Court in the civil proceedings for production of the original agreement to sell against the defence having been set up for such agreement to sell having never been entered into and the present FIR has been lodged only on a date thereafter.

Be that as it may, complainant concededly has availed of the civil remedy of specific performance of the alleged agreement dated 07.03.2015 and such suit is pending adjudication before the competent Court.

Insofar as the second set of allegation of fraudulent transfer of money and misappropriation of funds, learned State counsel as also counsel appearing for the complainant has not been able to corroborate the allegations pertaining to transfer of funds from a particular bank account held in HDFC bank of M/s S.B. Logistics and into the personal account of the petitioner in Axis Bank.

This Court finds that a novel method had been embarked upon by the Investigating Agency. In the FIR, Chetan Panchal and Bharat P. Patel had been reflected as accused. Incriminating material/evidence is sought to be collected against the petitioner on the strength of statement recorded of the aforenoticed two accused under Section 161 Cr.P.C. in the capacity of

witnesses.

This Court would desist from commenting further on such aspect as the matter is still under investigation.

Concededly, petitioner has joined investigation.

In the totality of circumstances and in view of the discussion herein above, this Court is of the considered view that custodial interrogation of the petitioner, as such, would not be warranted.

Prayer made in the instant petition is accepted. Order dated 05.12.2017 passed by this Court is made absolute.

Disposed of.

**14.03.2018**

*harjeet*

**(TEJINDER SINGH DHINDSA)  
JUDGE**

- |     |                            |        |
|-----|----------------------------|--------|
| i)  | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable?        | Yes/No |