S.No.103

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-51998 of 2018 (O&M)
Date of Decision:07.12.2018

Rajiv Gupta **.....Petitioner**

Vs.

State of Hayrana **.....Respondent**

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. S.K. Bishnoi, Advocate for the petitioner.

Mr. N.S. Shekhawat, Advocate for the complainant.

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Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail; in case FIR No.1292 dated 23.10.2018 registered under Sections 120-B, 420, 506 IPC at Police Station Jagadhri City, Districit Yamuna Nagar.

The allegation in the FIR is that the present petitioner along with seven others, constituted a joint family. The members of the joint family allured the complainant to make certain investment for purchase of a Company named `Royal Wood Pvt. Ltd.', situated in State of Gujarat. It was assured that the petitioner would invest the money and the members of the joint family would manage that Company. Accordingly, the complainant invested crores of rupees and purchased that Company. As per the understanding between the complainant and the members of the joint family of the present petitioner, the charge of that Company was given to one of the members of the joint family, namely, Sushil Gupta. In the process, another member of the joint family, namely, Rakesh Gupta, the brother of the present petitioner, became Director of the Company. Thereafter, the members of the joint family misappropriated the assets of the said Company and obtained other loans by mortgaging the properties of the Company. As a result, the complainant was put under the liability of crores of rupees. Hence, the dispute erupted. When the matter was raised by the complainant then Rakesh Gupta along with his family members entered into a Memorandum of Understanding dated 29.09.2016, in which the said Rakesh Gupta owned and admitted all the misdeeds committed by him and his other family members and assured the complainant to compensate him and to repay the entire liabilities of the complainant. As a compensation for part of the liability, the said Rakesh Gupta and Sushil Gupta signed this Memorandum of Understanding; to the effect that there is a House No.1058, HUDA, Sector-17, Jagadhri; measuring about 310 square metres; which is in the name of the wives of five brothers in that joint family and that the said Rakesh Gupta and Sushil Gupta have been authorised by their wives and the wives of their other brothers; to transfer the said house in the name of the complainant. Accordingly, a recital was included in the Memorandum of Understanding dated 29.09.2016 that henceforth the complainant has become owner of the house and so only he shall have right to deal with that house. However, on one hand, the said Rakesh Gupta and Sushil Gupta had undertaken to transfer the said house in the name of the complainant; whereas; on the other hand; by colluding with all the members of the joint family, they have transferred the said house in the name of three other persons, who happen to be their protegees. Accordingly, FIR was got lodged by the complainant that he has been cheated by the members of the joint family, including the present petitioner, with deep collusion and in conspiracy. When he raised objection, he has been threatened with life.

Learned counsel for the petitioner has submitted that if there is any promise to transfer the house in question in favour of the complainant then that promise is made only by the co-accused of the petitioner. The petitioner has never made any promise to transfer the said house in the name of the complainant. It is further submitted that there is no written power of attorney given qua the house in question; in favour of Rakesh Gupta and Sushil Gupta; to undertake to transfer of house in the name of the complainant. The petitioner is not even registered owner of the said house. It is further contended that there is no specific allegation against the petitioner as such. Furthermore, the petitioner is residing in Gujarat, therefore, he has no concern with the house in question or with the business of Royal Wood Pvt. Ltd. In the end, counsel for the petitioner has submitted that there was an earlier FIR lodged by the complainant; regarding the fraud committed to him qua the business of the Company. In that FIR, the petitioner has been released on anticipatory bail. Since one FIR has already been lodged, therefore, the second FIR for the same purpose is not maintainable.

On the other hand, learned counsel appearing for the complainant has submitted that the petitioner is hand in glove with all other co-accused and has very cleverly tried to show himself as an independent entity, and as if he has nothing to do with the joint family; as such. It is further contended that even the assertion of the petitioner that he has no concern with the business of Royal Wood Pvt. Ltd or the house in question are not correct. The wife of the present petitioner is a co-sharer in the house; mentioned in the FIR; and the petitioner had stood guarantor for the loan obtained by his brother Rakesh Gupta, by unauthorisedly mortgaging the properties of the Company of the complainant, namely, Royal Wood Pvt. Ltd. Therefore, it is contended that the petitioner is deeply and intricately involved in the fraud committed upon the complainant, firstly, by duping him and putting him under the liabilities by participating in process of taking of loans in the name of Royal Pvt. Ltd. and; secondly; by thwarting the transfer of the house mentioned above in the name of the complainant, which was to partly compensate him in the loss suffered by him. Learned counsel for the complainant has also pointed out that even the alleged sale of the house in favour of other persons is a sham transaction; and it is only shown in papers, because even the learned Sessions Judge, while dismissing the anticipatory bail application of the present petitioner; has recorded that the said Rakesh Gupta is still residing in the same house in October 2018, although the same allegedly stood sold to other persons in August, 2018. Qua the second FIR, regarding the same aspect, the learned counsel for the complainant has submitted that the earlier FIR was lodged on 10.09.2017. It was only, thereafter, that the house in question; which was undertaken to be transferred to the complainant, on 29.09.2016 has also been sold away by the accused persons on 30.08.2018. Therefore, the second FIR is very much maintainable; since new offence has been committed by the petitioner. In any case, it is contended by the counsel that, at the best, the petitioner can claim joint trial, even if the allegations are considered to be the part of the same transaction, but there is not absolute bar that there cannot be two separate FIRs in case of two separate crimes, committed at different times.

Although any detailed discussion on any aspect of the case, may not be desirable, while deciding a petition for anticipatory bail. However, this Court is constrained to delve into the merits of the case; because the counsel for the petitioner has insisted for the same. Having heard the learned counsel for the parties, this Court finds sufficient substance in the arguments of learned counsel for the complainant. As the record and arguments would show; the petitioner has tried to claim himself to be innocent, by arguing that he has no concern with either the business of the Royal Wood Pvt. Ltd. or the house in question. However, the next moment itself, it is exposed that the petitioner stood guarantor for the loans, which were unauthorisedly availed by his brothers on the properties of the Royal Wood Pvt. Ltd. His wife, is admittedly, one of the co-sharers of the house in question; which was assured to be transferred in the name of the complainant. This is also not disputed that the wife of the petitioner is also involved in transferring that house in the name of some other persons. Hence, by no means, it can be said that the petitioner or his wife are not involved in the transactions between the complainant and the other members of the family, or in the transactions designed to commit fraud upon the complainant.

Although learned counsel for the petitioner has submitted that there was no written power of attorney; given by the wife of the petitioner in favour of Rakesh Gupta and Sushil Gupta; to undertake to transfer the said house in favour of the complainant, the fact remains that the wife of the petitioner or for that matter, the petitioner has never lodged any complaint or FIR against their brother-in-law/brothers Sushil Gupta and Rakesh Gupta, who; undertake to transfer the said house in the name of the complainant, for wrongly claiming to have authority to transfer the said house in the name of the complainant. Although there are no specific allegations against the petitioner and he claims to be residing in Gujarat, however, the fact remains that the wife of the petitioner is one of the co-sharers in the said house. Despite being resident of State of Gujarat, the wife of the petitioner has come all the way to Yamuna Nagar (Haryana) to execute the sale deed qua the said house in favour of the protegee of the family. This shows that the petitioner as well as his wife; both are well aware of the entire conspiracy and fraud. So the fact that they can be participant in the same cannot be ruled out. So far as the argument of the learned counsel for the petitioner; that there cannot be any second FIR, on the same set of facts, is concerned, suffices it to say that incident of sale of the house, which is the second fraud committed upon the complainant is a fact subsequent to the earlier FIR. There is a direct participation in conspiracy in this incident also. Hence, if the second FIR has been got registered, then no exception can be taken to the same. This is not even relevant for the purpose of anticipatory bail.

Needless to say that the accused; as an individual, has a right to life and liberty, yet that right can be subjected to restrictions through the procedure prescribed by law. In case of criminal investigation, the ordinary procedure prescribed to curtail the right to life and liberty is that the accused can be arrested by the Investigating Officer, even without warrants from the Court. But, to protect the innocent citizens from the undue harassment at the hands of the Police, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. Even this power is not available to Courts in some parts of country or qua some offences under some penal status. However, this extra-ordinary power can be exercised only if there are extenuating circumstances, predominantly; leading towards the innocence of the accused, coupled with the fact that if the accused is protected against the arrest, then the investigation of the case would not be unduly hampered.

Keeping in view the facts of the present case, the cob-web of the offence is so intricately woven that the same cannot be unearthed by the Police unless the accused are put to a situation where they can be made to answer the questions correctly and get the necessary recoveries effected. Needless to say that the Hon'ble Supreme Court has already held in several cases that the custodial interrogation is qualitatively and quantitatively different than the one when the accused is interrogated when he is having sense of protection of the Court order. Hence, in the present case, if the petitioner is granted protection of the Court orders then the fair investigation of the case is likely to be hampered. Otherwise also, this Court does not find any extenuating circumstance in favour of the petitioner; so as to persuade this Court qua innocence of the petitioner and so to exercise its powers under Section 438 Cr.P.C.; and thereby to preclude the Police from carrying out the full-fledge investigation in its right earnest.

Dismissed.

December 07, 2018 **(RAJBIR SEHRAWAT)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No