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

**CRM-M-10053-2019 (O&M)
Date of Decision: 08.05.2019**

Balraj Jagdish Chopra ……Petitioner

Versus

State of Punjab …..Respondent

**Coram: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr.Bipan Ghai, Senior Advocate assisted by
Mr.Dilpreet Singh Gandhi, Advocate for the petitioner.

Mr.H.S.Grewal, Addl, Advocate General, Punjab.

Mr.Vijay Kumar Jindal, Senior Advocate assisted by
Mr.R.Kartikeya, Advocate for the complainant.

ARUN KUMAR TYAGI, J.

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The petitioner has filed present petition under Section 439 of the Code of Criminal Procedure (for short 'the Cr.P.C.) for grant of regular bail in case FIR No.33 dated 13.04.2015 registered under Sections 120-B, 406, 420, 464, 467 and 471 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station, Khamanon, District Fatehgarh Sahib.

Complainant Balbir Singh Uppal submitted written complaint alleging that accused Balraj Jagdish Chopra, Chairman Managing Director of M/s Vidhi Properties Ltd., Mumbai and his co-accused Taranath Mahalinga Shetty and Pinki Chopra, Directors of the abovesaid company fraudulently

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represented to the complainant about construction of flats in their proposed building known as 'Om Vihar' Mumbai, construction of which was to commence by the end of 2012 and possession of flats to be handed over within a period of 18 months, which had the prospect of giving double or triple returns and thereby dishonestly induced the complainant to invest an amount of Rs.2 crores for booking of 4 flats by making one time deposit through RTGS. The above-said Company also issued receipts and allotment letters to the complainant. On visit by the representative of the complainant to verify the status of the project, the complainant came to know that no such project was under execution and even the said company was not owner of the piece of land over which the building was to be constructed. The accused cheated the complainant and dishonestly misappropriated the amount paid for their personal use. As the complaint revealed commission of offences punishable under Sections 406, 420 and 120-B of the IPC, FIR No.33 dated 13.04.2015 was registered in Police Station Khamanon, District Fatehgarh Sahib. The Police investigated the case and on finding that the accused fraudulently induced the complainant and his son-in-law as Directors in Arin Developers Pvt. Ltd. without their consent, knowledge and authority added Sections 464, 467 and 471 during investigation. Accused Taranath Mahalinga Shetty was arrested on 03.10.3015 who was granted bail by Additional Sessions Judge, Fatehgarh Sahib vide order dated 16.11.2015. The petitioner and his wife co-accused Pinky Chopra absconded. The petitioner was declared proclaimed offender on 01.12.2015 and was arrested on 29.12.2018. On completion of investigation, the police has filed challan against accused Taranath Mahalinga Shetty and Balraj Jagdish Chopra.

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Learned Counsel for the petitioner has argued that the complainant had given to the petitioner and his partner-Taranath Mahalinga Shetty an amount of Rs.1 crore each as royalty for induction as Directors in Arin Developers Pvt. Ltd. which was under oral mutual agreement treated as unsecured loan. On request of the complainant, the complainant and his son in law-Kamal Kant Diwan were appointed as Directors by the petitioner and his co-accused in their Company M/s Arin Developers Private Ltd. which is doing business of developers at Mumbai since long and is a flourishing company. Share transfer cheques of the complainant and his son in law-Kamal Kant Diwan were received in October, 2012 and share certificates were issued to the complainant and his son in law-Kamal Kant Diwan. The complainant was arrayed as accused in various criminal cases including Rs.5,600/- crores NSEL Scam and the complainant and companies controlled by him were alleged to have misappropriated funds of Rs.720/- crores on which the complainant immediately asked the petitioner to pay double the amount of Rs.2 crores given as unsecured loan for a period of 10 years and when the petitioner showed his inability to refund the amount immediately, the complainant by misusing his influence and power lodged various complaints against the petitioners and his co-accused. The complainant forged the allotment letters of 4 residential flats regarding which FIR No.424 dated 13.04.2015 was registered against the complainant. Investigation has already been completed and challan has been filed. The petitioner is in custody for more than four and half months. The trial is likely to take long time. The offences alleged to have been committed by the petitioner are triable by the Judicial Magistrate, First Class having power of passing maximum sentence of three years. The petitioner was declared

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proclaimed offender but he did not evade the process of law and was merely availing remedies available to him under the law. The petitioner is suffering from serious ailments requiring continuous medical treatment and supervision. His co-accused Taranath Mahalinga Shetty was granted bail by the learned Additional Sessions Judge, Fatehgarh Sahib vide order dated 16.11.2015 (**Annexure P-6**). Therefore, the petitioner may be granted regular bail.

On the other hand, learned Counsel for the complainant has argued that the petitioner and his co-accused fraudulently represented to the complainant regarding the project of construction of building known as 'Om Vihar' of their company M/s Vidhi Properties Pvt. Ltd., Mumbai being under execution and dishonestly induced him to invest amount of Rs.2 crores for booking of 4 flats on assurance of giving of double/triple return. The above said Company also issued receipts and letters for allotment of 4 residential flats. On visit of the site by his representative for verification of the status of the project, the complainant came to know that the project was not under execution and company did not own the piece of land over which the building was to be constructed. The accused fraudulently induced the complainant and his son in law-Kamal Kant Diwan as Directors in Arin Developers Pvt. Ltd. Ltd. without their consent, knowledge and authority. The accused cheated the complainant and misappropriated the amount invested. The petitioner made mockery of law and absconded, till his arrest on 29.12.2018. His wife is still absconding and could not be arrested. When the petitioner was remanded to judicial custody, the petitioner, in collusion with the Jail Authorities and for extraneous consideration, managed to get himself admitted in private hospital.

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The petitioner having misused the court process does not deserve the concession of bail. Therefore, the bail application may be dismissed.

The petitioner and his co-accused are alleged to have fraudulently represented to the complainant about construction of flats in their proposed building known as 'Om Vihar' at Mumbai, construction of which was to commence by the end of year 2012 and possession of flats was to be handed over within a period of 18 months, which had the prospect of giving double/triple returns and thereby induced the complainant to invest an amount of Rs.2 crores for booking for 4 flats by making one time deposit through RTGS. In his written statement given in pursuance to FIR (**Annexure R-2/1**), the petitioner accepted that he and his co-accused Taranath Mahalinga Shetty received payment of Rs.1 crore each from complainant Balbir Singh Uppal via RTGS. The petitioner claimed that the amount of Rs.1 crore was paid to him as royalty for appointment of complainant Balbir Singh Uppal and his son in law as Directors in Arin Developers Private Ltd. but in the same breath the petitioner averred that the abovesaid amount was to be treated as unsecured loan for a tenure of 10 years as per mutual agreement between him and complainant Balbir Singh Uppal and the abovesaid amount was accordingly shown in his income tax return as unsecured loan. Contrary to the above stand, the petitioner and his partner Taranath Mahalinga Shetty issued receipts and allotment letters dated 14.05.2013 acknowledging receipt of amount of Rs.2 crores as full and final payment for 4 flats. The petitioner claimed that allotment letters were bogus, fabricated and made with mala fide intention regarding which FIR No.424 dated 13.04.2015 (**Annexure P-7**) has been registered under Sections 464, 465, 467, 468, 471 and 120-B of the IPC in

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Police Station Goregaon West District Mumbai but the allegations made in the abovesaid FIR were found to be without any substance. Complainant Balbir Singh Uppal and his son-in-law were appointed as Directors in Arin Developers Pvt. Ltd. without their consent, knowledge and authority by playing fraud. The petitioners are alleged to have cheated the complainant, forged the documents and misappropriated the amount and to have thereby committed offences punishable under Sections 120-B, 406, 420, 464, 467 and 471 of the IPC.

No doubt, the offences alleged to have been committed by the petitioner are triable by Judicial Magistrate First Class but merely on that count, maximum punishment for the same cannot be said to be 3 years as even in case of trial by Judicial Magistrate First Class, the petitioner may be sentenced, on reference by Judicial Magistrate First Class, to imprisonment upto 7 years by the Chief Judicial Magistrate. The alleged involvement of the complainant in cases of cheating and criminal misappropriation does not in any manner lessen the gravity of the offences alleged to have been committed by the petitioner and entitle him to any sympathy, leniency or favourable treatment. What needs to be emphasized in this context is that the factors reckoning for facilitating ease of business and sustaining business environment for faster development, suffer due to ever increasing frauds and inordinate delay in adjudication of criminal liability which in a way also paralyses the national economy. Therefore, the cases of fraud have to be sternly dealt with to curve the rampancy thereof and trial of such cases has to be expedited for early adjudication of criminal liability so as to ensure denial of fruits of their crime

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to those guilty of economic offences and exoneration of those falsely implicated due to business rivalry.

The allegations made against the petitioner and his co-accused are serious and have to be adjudicated upon on the basis of evidence to be produced during the trial. In the present case, the trial is not likely to take long time but for the dilatory tactics on the part of the accused. In this regard the conduct of the present petitioner becomes relevant and needs to be noticed. The petitioner and his wife filed application for anticipatory bail and on dismissal of his application for anticipatory bail the petitioner absconded on which he was declared proclaimed offender vide order dated 01.12.2015. The petitioner continued to evade the process of law for a long period of about 3 years till he was arrested on 29.12.2018. During all this period the petitioner cannot be said to be merely pursuing the judicial remedies available to him. On the other hand, he failed to surrender and continued to evade process of law despite specific adjournment taken by learned Counsel appearing for his wife during hearing of her anticipatory bail application on 01.02.2016 to complete instructions with regard to surrender by him. Even after his remand to judicial custody, the petitioner, in collusion with concerned jail authorities and evidently for extraneous consideration, managed to get himself admitted in private hospital-Amar Hospital, Patiala in the name of his medical treatment. From CRM-16229-2019 filed by the complainant and reply to the same filed by Deputy Superintendent, Central Jail, Patiala, it appears that even on his discharge by the above-said hospital, on communication for his examination by Medical Board regarding his requirement of such medical treatment, the petitioner, instead of reporting to or intimating the jail authorities, went to

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S.L.G. Ortho and Spine Centre, Patiala.The petitioner claimed himself to be suffering from pain in chest and back bone. However, the petitioner has not produced any medical treatment record to show his medical treatment for any of these ailments prior to his arrest and remand to police/judicial custody in the case. The wife of the petitioner was also declared proclaimed offender and is still absconding. Due to the conduct of the petitioner, the trial has been hampered, so much so that even the matter of framing of charges could not be heard and decided by the trial Court.

No doubt, co-accused Taranath Mahalinga Shetty has been granted bail by the Additional Sessions Judge, Fatehgarh Sahib but his case stands on different footing as there was no such misconduct on his part. In view of the nature of the allegations made, gravity of accusation, previous conduct of the petitioner and chances of the petitioner absconding and delaying the trial if released on bail and other attending facts and circumstances, we are of the view that the petitioner does not deserve the concession of bail. We are, therefore, not inclined to accept the petition.

Accordingly, the petition is dismissed.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

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

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