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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.12326 of 2020 (O&M)
Decided on: 31.08.2020

Mohan Sharma

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ishaan Bhardwaj, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. A.G, Haryana.

Mr. Chirag Wadhwa, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.284 dated 28.08.2019 registered under Sections 120-B, 406, 420, 467, 468, 471 IPC at Police Station Civil Lines Bhiwani, District Bhiwani.

The operative part of the order dated 14.05.2020, vide which interim anticipatory bail has been granted to the petitioner, is reproduced as under:-

> **"....***The FIR was registered by Shri Ram Finance Company with the allegation that the main accused namely Sahil Kokcha and Laxmi Kokcha (02 brothers) had obtained a loan of Rs.10 lacs on 28.05.2015 by mortgaging their house and the original sale deed of the house was kept as a security with the Company and entry of the mortgage was also made in the records of the Municipal Corporation. It is further stated that thereafter,*

both the brothers started delaying the monthly installment of Rs.28,767/-. It is also stated that later on, on 27.04.2016, it came to the knowledge of the complainant that both the brothers have sold the house to accused No.3 namely Kirti, wife of Vijender and have also got removed the mortgage endorsement from the Municipal Corporation records by way of preparing a fake No Objection Certificate dated 13.04.2016.

It is further stated in the FIR that thereafter, to mislead the Company, the two brothers paid 07 monthly installments. The FIR has been registered primarily against 03 accused namely Sahil Kokcha, Laxmi Kokcha and Kirti with the allegation that they have played a fraud by forging the document and selling the property which was mortgaged with the complainant Company without clearing the loan.

Counsel for the petitioner has argued that the petitioner, who was an employee of the Company at the time when the loan was disbursed, is not named in the FIR and there is no allegation against him.

Counsel for the petitioner has referred to the No Objection Certificate dated 13.04.2016 to submit that it is issued under the signature of one P. Kumar or P. Kaur and the petitioner is not the signatory of the same and apparently, the same is a fake and forged document as even the seal of the Company is fake.

Counsel for the petitioner has also submitted that 03 applications were filed before the Additional Sessions Judge, Bhiwani seeking anticipatory bail, one by the petitioner – Mohan Sharma and two by the 02 brothers i.e. the main accused persons and all the 03 bail applications have been decided by the same officer.

Counsel for the petitioner has further referred to the orders granting bail to the main accused to submit that despite the fact that it was noticed that both the brothers *have procured the No Objection Certificate from the Company (allegedly issued by the petitioner, the then Manager of the Company) and despite the fact that an amount of Rs.18 lacs was still outstanding against them, however, both the brothers were granted the concession of anticipatory bail on the premise that since arbitration proceedings were pending and some order has been passed, the matter is of civil nature. The order is silent about the allegation of committing fraud, forgery and selling the mortgaged house in favour of accused No.3 – Kirti.*

Counsel for the petitioner has further submitted that as a part of the conspiracy between the 03 accused persons, the purchaser Kirti has made a statement before the police that she has paid the entire amount of the loan to the petitioner in cash to the petitioner and, therefore, the No Objection Certificate was issued. The counsel further submit that the disclosure of Kirti if taken, on the face of it, would mean no sale consideration passed when sale deed was executed in her name by two brothers and it show the meeting of mind of all 03 accused named in the FIR.

Counsel for the petitioner has also argued that there is no scientific investigation done by the police to find out whether the signatures on the No Objection Certificate bears the signatures of the petitioner and merely on a disclosure of the co-accused that she has paid the amount to the petitioner to clear the loan, the petitioner is indicted in this case, though, in the FIR, it is stated that the original sale deeds is in possession of the complainant.

Surprisingly, the Additional Sessions Judge has granted the anticipatory bail to the 02 brothers, who are the principal loanee of the amount and admittedly, they were the defaulters on the date when the alleged No

Objection Certificate was issued i.e. on 13.04.2016. The allegation in the FIR that this No Objection Certificate is a forged document and even subsequently, the act of 03 accused persons named in the FIR in disposing of the property, within 03 days of the issuance of this No Objection Certificate and removing endorsement in Municipal Corporation record, is nothing but an act of calculated conspiracy between them, is completely ignored while granting the concession of anticipatory bail to the 02 co-accused.

Though, it is the discretion of the Court to grant anticipatory bail, however, it is well settled principle of law as held by the Hon'ble Supreme Court that where the offence is committed against the State or the financial institution like the complainant, even in case of compromise, the FIR may not be quashed.

It is also well settled principle of law that mere initiation of civil proceedings which is an independent right of the complainant, does not absolve the accused of criminal liability especially when 02 brothers are the beneficiaries of the loan and there are direct allegations that they have forged the No Objection Certificate.

The order granting anticipatory bail to 02 brothers do not meet the basic requirement of granting anticipatory bail.

*List again on 31.08.2020**....”***

In pursuance of the order dated 14.05.2020, the explanation by the Additional Sessions Judge as well as the affidavit of the Superintendent of Police, Bhiwani is on record.

There is a variation in both of them.

The affidavit of the Superintendent of Police, Bhiwani is silent about the fact that as to how the co-accused had paid the huge amount in cash to the petitioner whereas the same should have been paid either by way of a cheque or demand draft.

Counsel for the petitioner has submitted that, in pursuance to the order dated 14.05.2020, the petitioner has appeared before the Investigating Officer and has joined the investigation.

Counsel for the State has not disputed the aforesaid fact, however, opposed the prayer for bail.

In view of the above, considering the fact that the petitioner is disputing the aforesaid fact and has joined the investigation, no further action is called for. Accordingly, this petition is allowed and the interim bail granted to the petitioner vide order dated 14.05.2020 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

(ARVIND SINGH SANGWAN)
JUDGE

31.08.2020
yakub

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No