IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.16890 of 2020 (O&M)
Decided on: 06.07.2020

Sohit Khosla and another

....Petitioners

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. V.K. Jindal, Sr. Advocate
with Mr. Akshay Jindal, Advocate
for the petitioners (through video conferencing)

Mr. Ajay Pal Singh Gill, AAG, Punjab.
(through video conferencing)

Mr. Gaurav Chopra, Advocate
for the complainant (through video conferencing)

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for grant of anticipatory bail to the petitioners in FIR No.151 dated 18.06.2020 registered under Sections 420, 465, 467, 468, 471, 120-B of the Indian Penal Code, 1860 (in short 'IPC') at Police Station City Batala, District Batala.

On 29.06.2020, the following order was passed:-

> *"Heard through video conferencing.*
>
> *It has been contended by learned counsel for the petitioners that there is a total mismatch as regards the contents of the FIR and the investigation which has been carried out on the basis of the FIR. It has further been contended that though the FIR talks about the purchase of jewellery by the petitioners on behalf of a third person and giving a cheque to the complainant on behalf of that third person, the investigation talks of a wholly different issue that is regarding the issuance of power of attorney in*

favour of the petitioners by the complainant.

Notice of motion.

On the asking of the court, Ms. Bhavna Gupta, DAG, Punjab has joined the session through video conferencing and accepts notice on behalf of the State.

Mr. Gaurav Chopra, Advocate, has also put in appearance and accepted notice on behalf of the complainant. He has submitted that on 19.06.2020 there was an amendment in the FIR by way of two Rapat Nos.49 and 50 and these Rapats were physically handed over to the Reader of the Court while the matter was being heard through video conferencing. However, in the order dated 20.06.2020 the same has inadvertently not been noticed due to the fact that the documents which were given to the Reader of the Court were not brought to the notice of the Court at the time of deciding the application.

Same contentions have been reiterated by the learned counsel for the State.

Adjourned to 02.07.2020.

Reply, if any, be filed on or before the next date of hearing."

The complainant has filed his counter-affidavit along with the documents and advance copy to learned senior counsel for the petitioners.

Learned senior counsel for the petitioners has argued that in fact, the petitioners and the complainant, previously were having business dealings and on an earlier occasion, the petitioner lodged an FIR No.168 dated 29.08.2017 under Sections 420, 406, 34 IPC, Police Station Civil Lines, Batala, was registered against Jaswinder Kaur and Surinder Pal Singh, therefore, there was no occasion for the petitioners to deal on their behalf. It is further submitted that even subsequently, another FIR No.127 dated 21.08.2019 under Sections 420, 406, 34 IPC, Police Station City Batala, District Batala, was also registered against the aforesaid two persons i.e. Jaswinder Kaur and Surinder Pal Singh.

Learned senior counsel has also submitted that even the complainant has filed complaints under the Negotiable Instruments Act, 1881 (hereinafter to be referred as 'the N.I. Act'), against Jaswinder Kaur and Surinder Pal Singh, which are pending before the Court at Batala and therefore, the petitioners never dealt on their behalf with the complainant. It is further argued that in fact, the dispute between the complainant and his mother arose with the petitioners, on account of a registered General Power of Attorney (GPA) dated 22.06.2017, in furtherance of which the petitioner No.1 has entered into an agreement to sell on 04.12.2019 with one Damandeep Singh and Barinder Pal Singh on behalf of the complainant. It is also submitted that even on that account, Damandeep Singh and Barinder Pal Singh have filed a civil suit for permanent injunction against the complainant, his mother and petitioner No.1 on 03.05.2020 and the same is pending before the Civil Judge (Jr. Division), Batala. It is further argued that in fact, it is the complainant, who owe an amount of Rs.26 lacs to petitioner No.1 and in this regard, on dishonouring of a cheque issued by the complainant and his mother, the petitioner No.1 has filed a complaint under Section 138 of the N.I. Act on 13.05.2020, which is also pending before the Court at Batala.

Learned senior counsel for the petitioners has also submitted that in fact, the present FIR was registered regarding the purchase of some jewelleries on behalf of the aforesaid two persons and later on, by way of two Rapat/DDR Nos.49 and 50 dated 19.06.2020, the police has amended the FIR without there being any such provision to transpose new facts in the FIR as the FIR denotes the First Information Report recorded by the police and the police, during the investigation of the allegation in the FIR, can add any offence, relating to that particular incident but cannot add new incidents by recording DDRs as is done in the present case.

Learned senior counsel for the petitioners has further argued that the police, well within its powers, could have registered another FIR with regard to the offences having different date and incidents but no such amendment in the FIR is permissible in law.

Learned senior counsel for the petitioners has also submitted that it is own case of the complainant, as per the DDRs that when the agreement to sell was executed by the complainant in favour of petitioner No.1, a GPA was also registered.

Learned senior counsel for the petitioners has referred to the contents of the agreement dated 22.06.2017, which was entered into between the complainant – Sumit Kumar, his mother Usha Rani with Bhawna Khosla through her brother-in-law i.e. petitioner No.1 Sohit Khosla and signed by petitioner No.2 – Surinder Khosla as a witness.

Learned senior counsel for the petitioners has referred to a Clause of the agreement wherein it is recorded as under:-

> *"In respect of the 2/3rd share in the aforesaid shop, we have executed a General Power of Attorney in favour of Sohit Khosla and agreement has been executed in the name of Bhavna Khosla as the amount has been paid by Bhavna Khosla. The aforementioned General Power of*

> *Attorney shall not be cancelled without taking Bhavna Khosla and Sohit Khosla into confidence. This agreement is therefore written on this date 22.06.2017.”*

Learned senior counsel for the petitioners has, thus, argued that it was agreed between the parties that the GPA is part and parcel of the agreement to sell and cannot be cancelled without the consent of Bhawna Khosla and petitioner No.1 – Sohit Khosla.

Learned senior counsel for the petitioners has further referred to the enquiry conducted by the Deputy Superintendent of Police, Batala, that the petitioners, in order to grab the property of Sumit Kumar, have entered into an agreement dated 04.12.2019 with Damandeep Singh and Barinder Pal Singh and they have received an amount of Rs.10 lacs as earnest money and thus, have committed the fraud.

Learned senior counsel for the petitioners has also argued that the complainant has made improvements in their versions while recording the two DDRs, which are not pleaded either in the civil suit for permanent injunction or in the complaints under Section 138 of the N.I. Act. It is further submitted that the matter is already pending before the various Courts and is of civil nature and just to put pressure on the petitioners, the present FIR has been registered to give it a colour of criminal litigation.

Learned senior counsel for the petitioners has further submitted that he has the instructions to say that the petitioners are ready to deposit the amount of Rs.10 lacs with the trial Court/Illaqa Magistrate, subject to final outcome of the case, to be kept in an FDR.

In reply, counsel for the State assisted by counsel for the complainant has opposed the prayer for bail on the ground that the complainant has given the first application dated 21.02.2020 regarding the cheating of Rs.51.76 lacs and on account of gold transactions on behalf of the aforesaid two persons i.e. Jaswinder Kaur and Surinder Pal Singh. It is further submitted that the second complaint was given on 25.05.2020, regarding fabrication of some false GST bills, by showing sale of fake goods on credit basis. It is also submitted that the petitioners in February, 2020, tried to involve the complainant in a false case under Section 307 IPC and his complaint was found to be false by the police on seeing the recordings of the CCTV camera. It is further argued that another application was given on 05.06.2020, for which the FIR was registered on account of fabricating an agreement in favour of Damandeep Singh and Barinder Pal Singh, who are business partners of the petitioners.

It is not disputed by the complainant that the contents of the application dated 21.02.2020 as per the enquiry, were recorded in the present FIR and the police, thereafter, rectified the contents of F.I.R by recording two DDR Nos.49 and 50 dated 19.06.2020.

Counsel for the complainant has further argued that the complainant and his father had agreed to sell the property to Bhawna Khosla as per the agreement dated 22.06.2017 and has also given a power of attorney in favour of Sohit Khosla. It is stated that the amount of Rs.1 crore paid by the petitioners was credited in the account of Usha Rani, mother of the complainant, however, later on in December, 2017, the agreement to sell was cancelled and Bhawna Khosla received

Rs.50 lacs through HDFC bank and another amount of Rs.50 lacs from Usha Rani on 20.12.2017 through HDFC bank. It is also stated that once the agreement was cancelled, there was no occasion for petitioner No.1 to act upon, on behalf of the petitioner as per G.P.A. while entering into agreement to sell in favour of Damandeep Singh and Barinder Pal Singh.

Counsel for the complainant has further argued that in fact, the fraud has been played with the complainant as the petitioner No.1 tried to sell the property on the basis of the GPA, which was later on cancelled, on throw away prices and received Rs.10 lacs as earnest money. It is further submitted that the agreement to sell dated 04.12.2019 in favour of Damandeep Singh and Barinder Pal Singh is an anti-dated and fabricated agreement. It is also submitted that in fact, petitioner No.2 – Surinder Khosla has appeared as a witness in FIR No.5 dated 10.01.2020 under Section 302 IPC at Police Station Chatiwind, Amritsar, wherein the son and wife of Barinder Pal Singh, are accused.

Counsel for the complainant has also submitted that in fact, a suit for recovery and mandatory injunction was also filed by M/s. Kartike Gold Enterprises in which the complainant is a partner before the Commercial Court at Gurdaspur on 13.02.2020 against petitioner No.2 and his firm M/s. Shree Ganesh Enterprises regarding a cheque of Rs.26 lacs and another suit for recovery is filed on the basis of the sale of gold and the payments due against petitioner No.1.

In reply, learned senior counsel for the petitioners has again reiterated the argument that in none of the civil suit filed and relied upon by the complainant, the factum of cheating as alleged in the present FIR is mentioned and further argued that it is own case of the complainant that there are business transactions qua which both the parties are demanding money against each other.

After hearing the learned counsel for the parties, I find merit in the present petition.

Admittedly, the FIR was registered with allegation of cheating with the complainant regarding the sale of gold by the complainant and his mother Usha Rani with the firm M/s. Kartike Gold Enterprises owned by petitioner No.1. Later on, by registering two DDR Nos.49 and 50 dated 19.06.2020, certain new facts on the basis of the complaints given by the petitioners were added in the present FIR, a procedure which is unknown to the criminal law. There is no such provision in Cr.P.C. for amending the contents of the FIR wherein new allegations are with regard to different transactions like the agreement to sell as set up by the complainant.

It is also a matter of record that various litigations are pending between the parties before the Civil Court as well as before the Criminal Court where the complaints under the N.I. Act are pending. In two civil suits filed by the complainant, which were filed after giving the complaints to the police forming basis of the FIR/two DDRs, no such allegation of fraud regarding agreement to sell is mentioned and it appears that the FIR has been registered just to put pressure on the petitioners.

Learned senior counsel for the petitioners has stated that the dispute regarding agreement to sell and receiving of Rs.10 lacs is admitted by the petitioners and petitioner No.1 is ready to deposit the said amount in the trial Court/Illaqa Magistrate, subject to final outcome of the case, to show his bona fide. It is also stated that with regard to the other claims inter se complainant and the accused, are primarily of civil nature as it is admitted case of the complainant that they had business transactions with the petitioners and have already filed suit for recovery.

In view of the above, this Court is of the considered opinion that the entire case is based upon the documentary evidence for which the custodial interrogation of the petitioners is not required. Accordingly, this petition is allowed and the petitioners are directed to be released on interim bail, to join the investigation, subject to the conditions envisaged under Section 438(2) of the Code of Criminal Procedure, 1973.

The petitioners are granted two months time to deposit the amount of Rs.10 lacs before the trial Court/Illaqa Magistrate without prejudice to their right of defence. The amount so deposited will be kept in an FDRs fetching highest rate of interest, subject to final outcome of the case.

(ARVIND SINGH SANGWAN)
JUDGE

06.07.2020
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Whether speaking/reasoned Yes/No
Whether reportable: Yes/No