

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

CRM-M No.30826 of 2020 (O&M)
DATE OF DECISION: 26.10.2020

Rakesh KumarPetitioner

versus

State of Haryana & Ors.Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

Mr. Gautam Dutt, Advocate for the complainant.

Mr. Kunal Dawar, Advocate for R.K. Enterprises.

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ALKA SARIN, J.:

The arguments heard through video conferencing.

CRM No.25707 of 2020:

This is an application by the complainant, M/s Trim India
Private Limited, for being impleaded as a necessary party in the present
petition.

For the reasons stated in the application, the application is allowed and Trim India Private Limited is impleaded as respondent No.2. Amended memo of parties is taken on record.

CRM No.25702 of 2020:

This is an application for placing on record certain facts along with annexures by way of reply of the complainant, M/s Trim India Private Limited.

For the reasons stated in the application, the same is allowed and the reply by the complainant, along with its annexures, is taken on record subject to all just exceptions.

CRM No.25824 of 2020:

This is an application on behalf of R.K. Enterprises Private Limited who claims to be the rightful owner of the land and, hence, *de facto* complainant. The application has been filed for being impleaded as a party.

Since the applicant claims to be the rightful owner of the land and, hence, would be an affected party and a *de facto* complainant, the application is allowed and applicant is permitted to be impleaded as respondent No.3. Registry to amend the memo of parties accordingly.

CRM-M No.30826 of 2020

This is the second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.158 dated 05.04.2018 for offences under Sections 406, 420, 467, 468, 471, 506, 120-B of the Indian Penal Code, 1860 (IPC) registered at Police Station Badshahpur, District Gurugram. The first petition filed by the

petitioner was dismissed as withdrawn by this Court vide order dated 15.07.2020 with liberty to approach the Sessions Court in view of certain new facts which had come to the knowledge of the petitioner.

The brief facts relevant to the present case are that on 16.08.2016 an agreement to sell (Annexure P-5) was entered into by one BRM Developers Private Limited through its proprietor Bahadur Singh for sale of land measuring 16 Kanals 11 Marlas situated within the revenue estate of Village Bhairampur (now Badshahpur), District Gurugram, in favour of the complainant, namely, M/s Trim India Private Limited, for a total consideration of Rs.5,10,00,000/-. An amount of Rs.3,00,00,000/- was paid as earnest money by the complainant to BRM Developers Private Limited. The date fixed for registration of the sale deed was 16.11.2016. The said agreement to sell was witnessed by the petitioner herein. Thereafter, the complainant, M/s Trim India Private Limited, wrote a letter dated 06.09.2016 (Annexure P-6) to BRM Developers Private Limited wherein it was stated that it was admitted by BRM Developers Private Limited that the title of the land was defective and, hence, the same could not be transferred and, therefore, the advance money of Rs.3,00,00,000/- had been refunded by way of two cheques and a third cheque for Rs.80,00,000/- was given as compensation for loss of interest and damages which M/s Trim India Private Limited had suffered on account of this deal being reversed. These cheques eventually bounced.

On 26.10.2016, M/s Trim India Private Limited advanced a loan of Rs.1,00,00,000/- to the petitioner which was to be repaid with interest of Rs.46,00,000/-. For repayment of the loan and the interest, the

petitioner issued three cheques in favour of M/s Trim India Private Limited for Rs.48,00,000/- (dated 10.11.2016), Rs.49,00,000/- (dated 10.11.2016) and Rs.49,00,000/- (dated 15.11.2016).

On 27.10.2016 a sale deed (Annexure P-7) was executed by one R.K. Enterprises Private Limited qua land measuring 60 Kanals 14 Marlas in favour of Bahadur Singh son of Rattan Singh and the petitioner herein. The land covered by this sale deed was sold for a total sale consideration of Rs.10,64,15,000/- and included the land mentioned in the agreement to sell dated 16.08.2016 (Annexure P-5). On the basis of the said sale deed, mutation (Annexure P-8) was also entered in favour of the purchasers Bahadur Singh and the petitioner.

In February 2017, the three cheques issued by the petitioner in favour of M/s Trim India Private Limited were dishonoured leading to the filing of a complaint under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (Annexure P-10).

On 22.05.2017 a criminal complaint (Annexure P-1) under Sections 406, 467, 468, 471, 506, 120-B IPC was also filed by Anil Khatana (authorized representative of M/s Trim India Private Limited) against Bahadur Singh and the petitioner herein. The Judicial Magistrate Ist Class, Gurugram vide order dated 22.05.2017 (Annexure P-2) did not find it to be a fit case for registration of a case under Section 156(3) CrPC and fixed the matter for preliminary evidence of the complainant.

During the pendency of the said criminal complaint, the present FIR (Annexure P-4) was lodged on 05.04.2018. In the FIR (Annexure P-4) it has inter-alia been stated that the accused Bahadur Singh,

proprietor of BRM Developers Private Limited, Rakesh Kumar, the petitioner herein, and one Suresh Kumar, together with a common intention, had cheated the complainant by placing forged deal/documents by showing themselves as clear owners of the property and had siphoned off the money of the complainant. The accused were alleged to have cheated, committed fraud and threatened the complainant. The petitioner applied for grant of regular bail, which was dismissed by the Court of Additional Sessions Judge, Gurugram vide order dated 02.06.2020.

On 04.05.2018, one Akash Mishra, Director of R.K. Enterprises lodged a FIR (Annexure P-12) against several persons including Bahadur Singh and the present petitioner. It was alleged that the accused named in the said FIR had impersonated and sold the land belonging to R.K. Enterprises vide sale deed dated 27.10.2016 (Annexure P-7) in favour of Bahadur Singh and the present petitioner. The petitioner has since been granted regular bail in the said FIR vide order dated 28.05.2020 (Annexure P-13) passed by the Additional Sessions Judge, Gurugram.

In September 2019, M/s Trim India Private Limited filed a civil suit for recovery (Annexure P-14) against one M/s D.K. & Co. and the present petitioner. The said civil suit is for recovery of Rs.1,46,00,000/- alongwith interest and is still pending.

In May 2020, the petitioner filed his first application for grant of regular bail. Vide order dated 02.06.2020 (Annexure P-11) the said application was dismissed by the Additional Sessions Judge, Gurugram. The petitioner then approached this Court vide CRM-M-14969 of 2020 for

grant of regular bail. However, vide order dated 15.07.2020 (Annexure P-15) the said petition was dismissed as withdrawn with liberty to approach the Sessions Court in view of certain new facts which had come to the knowledge of the petitioner. The Sessions Court vide order dated 31.07.2020 (Annexure P-16) dismissed the second bail application of the petitioner. Thereafter, the third bail application by the petitioner was dismissed by the Additional Sessions Judge, Gurugram vide order dated 02.09.2020 (Annexure P-17).

The co-accused named in the FIR (Annexure P-4), Bahadur Singh, had approached this Court for grant of anticipatory bail in CRM-M-17868 of 2018 wherein interim protection was granted to him, inasmuch as, he had agreed to settle the matter and a cheque of Rs.25,00,000/- was also handed over to the counsel for the complainant (M/s Trim India Private Limited), which has been noticed in the order dated 30.07.2018 (Annexure P-21). However, on 28.03.2019 the said petition was dismissed for non-prosecution. CRM No.4401 of 2020 (Annexure P-22) has been filed for restoration of CRM-M-17868 of 2018 which application is now pending for 07.12.2020.

Learned counsel for the petitioner has contended that the agreement to sell qua which the present FIR has been lodged stood cancelled as is apparent from the letter dated 06.09.2016 (Annexure P-6) written by M/s Trim India Private Limited to BRM Developers Private Limited wherein it had been acknowledged that cheques worth Rs.3,00,00,000/- had been returned and in addition an amount of Rs.80,00,000/- had been given as compensation for loss of interest and

damages to M/s Trim India Private Limited. It is further the contention of the learned counsel for the petitioner that the complainant had first approached the Court on 22.05.2017 by filing a criminal complaint (Annexure P-1) against Bahadur Singh and the petitioner herein. The Judicial Magistrate Ist Class, Gurugram vide order dated 22.05.2017 (Annexure P-2) did not find it to be a fit case for registration of a case under Section 156(3) CrPC and the matter was fixed for preliminary evidence. It is during the pendency of the said criminal complaint that the present FIR was lodged on 05.04.2018. Learned counsel for the petitioner would further contend that the petitioner has been in custody for more than 9 months and that the challan has been presented and no recovery is to be made. It is also contended that for the same amount the complainant has already filed against the petitioner a complaint under Section 138 of the Negotiable Instruments Act, 1881 and also a suit for recovery.

Mr. Gautam Dutt, learned counsel appearing on behalf of the complainant (M/s Trim India Private Limited) has contended that the petitioner along with Bahadur Singh has not only committed a fraud with the complainant but had also tried to cheat another person in a similar manner regarding which FIR No.218 dated 12.05.2018 (Annexure R-2/1) was lodged. The said matter has now been settled and the earnest money amount of Rs.53,00,000/- has been returned to the complainant in the said FIR and a cancellation report has been filed. Mr. Dutt, learned counsel for the complainant, has further contended that knowing very well that the title in the land offered for sale to the complainant was defective and that Bahadur Singh was not the owner of the said land, the agreement to sell

(Annexure P-5) was executed in which the petitioner signed as a witness. Further, Bahadur Singh and the petitioner tried to purchase land measuring 60 Kanals 14 Marlas, which included the land covered by the agreement to sell dated 16.08.2016 (Annexure P-5), from one R.K. Enterprises. Qua the said transaction also, an FIR (Annexure P-12) has been lodged by the Director of R.K. Enterprises on the ground that their land had fraudulently been sold by impersonation to Bahadur Singh and the petitioner herein. The petitioner is named as an accused in the said FIR also. It is further contended that the co-accused, Bahadur Singh, was declared a proclaimed offender and has now been arrested and during the course of investigation it has come on the record that the petitioner had not only taken Rs.1,00,00,000/- from the complainant through bank transaction but had also received an amount of Rs.50,00,000/- each in his as well as in his wife's account from Bahadur Singh. The investigation further revealed that the petitioner had received further amounts of Rs.10,00,000/- and Rs.14,00,000/- from Bahadur Singh over and above Rs.1,00,00,000/-. The petitioner had, therefore, been benefited with an amount of Rs.2,24,00,000/- out of the whole transaction.

Mr. Kunal Dawar, Advocate, who has put in appearance for R.K. Enterprises, has stated that he has also a right to put forth his stand and assist the State counsel inasmuch as R.K. Enterprises Private Limited is also an aggrieved party since the land which was covered by the agreement to sell (Annexure P-5) and that covered by the sale deed (Annexure P-7) infact belonged to R.K. Enterprises Private Limited. It is the contention of Mr. Dawar that FIR No.203 dated 04.05.2018 (Annexure

P-12) under Sections 120-B, 419, 420, 467, 468, 471 IPC had been registered at Police Station Badshahpur against the petitioner and others in which the petitioner is the main accused and rather the petitioner is the mastermind behind the whole fraud and forgery committed. Mr. Dawar has relied upon *R. Rathinam vs. State by DSP, [2000(2) SCC 391]*; *Delta Car Pvt. Ltd. vs. Sanjeev Shah & Anr., [2014(42) RCR (Criminal) 705]*; *C.S.Y. Sankar Rao vs. State of Andhra Pradesh, [2009(21) RCR (Criminal) 695]*; *Harsha Sisodia vs. State of Andhra Pradesh, [2011(6) RCR (Criminal) 683]* and *Sathyavani Ponrani vs Samuel Raj, The State through the Inspector of Police, Umachi Kulam P.S., [2010(18) RCR (Criminal) 951]* to contend that R.K. Enterprises Private Limited is a *de facto* complainant and that he be permitted to assist the Court as well as the State counsel in the hearing of the petition.

Learned State counsel has also vehemently contended that it is not a fit case for grant of regular bail, inasmuch as, a major fraud had been committed by the petitioner.

I have heard the learned counsel for the parties.

Firstly, dealing with the contention raised by Mr. Dawar, learned counsel appearing for R.K. Enterprises Private Limited, that he is a *de facto* complainant and has a right of audience, since in the present case the land allegedly belongs to R.K. Enterprises Private Limited and a FIR has also been lodged by it for fraudulent sale of its land in favour of Bahadur Singh and the petitioner herein, this Court feels that any relevant facts that come to light while deciding the bail application on merits and in order to serve the ends of justice can be taken into consideration. R.K.

Enterprises Private Limited has been allowed to be impleaded as respondent no.3 and the facts disclosed by it are relevant for deciding the present bail application.

In the present case, *prima facie*, it appears that the petitioner along with the co-accused had repeatedly tried to sell land which was later deviously purchased in his name, alongwith another, from someone who allegedly never had a title in this land. In fact, a sale deed qua the land which was subject matter of agreement to sell (Annexure P-5) was executed in favour of the petitioner and another soon after he had signed on the said agreement to sell as a witness. By signing on the agreement to sell (Annexure P-5) the petitioner conveyed and knowingly acknowledged to the complainant that the ownership of the land was with BRM Developers Private Limited through Bahadur Singh when in reality the facts were to the contrary. The attempt by the petitioner was clearly to defraud the complainant.

The transaction vide which the petitioner and Bahadur Singh purchased the land under the sale deed dated 27.10.2016 (Annexure P-7) is also mired in dispute and litigation, a FIR (Annexure P-12) having been registered against them and several others by R.K. Enterprises who alleges itself as being the real owner of the land.

Further, the argument of learned counsel for the petitioner that the amount of Rs.1,00,00,000/- was given as a loan to the petitioner by the complainant and for the recovery of which amount proceedings under Section 138 of the Negotiable Instruments Act, 1881 and a civil suit are already pending, would be of no avail to the petitioner. It has come in the

investigation that out of the amount paid by the complainant to Bahadur Singh under the agreement to sell (Annexure P-5), to which the petitioner was a signatory as a witness, certain amounts were transferred to the account of the petitioner being Rs.1,24,00,000/-.

Bahadur Singh, the co-accused in the case, was declared a proclaimed offender. He had approached this Court for grant of anticipatory bail which was eventually dismissed for non-prosecution and the restoration application is now pending. In the said petition for anticipatory bail, the co-accused had initially offered to settle the matter and thereafter had neither settled the matter nor anybody had put in appearance on his behalf and ultimately the said petition was dismissed for non-prosecution. Thus, no leverage can be drawn by the petitioner from the case of the co-accused, Bahadur Singh.

Looking at the facts in totality this Court, prima facie, is of the view that the petitioner along with the co-accused has tried to defraud several people over the same piece of land. In atleast three FIRs, including the present one, the petitioner was named as an accused. The allegations against the petitioner are of a serious nature and there is material available on record evidencing his involvement as an abettor or conspirator with the other co-accused to amass huge wealth.

In view of the discussion above and keeping in mind the totality of the facts of the present case, this Court does not deem this to be a fit case for grant of regular bail. The present petition is dismissed.

However, it is made clear that any observations made herein above shall not be treated as an expression of opinion on the merits of the case.

Dismissed.

**(ALKA SARIN)
JUDGE**

26.10.2020
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<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
