

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

CRM-M-20269-2019 (O&M)
Date of Decision:- 24.8.2021

Ishan Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. A.P.S.Deol, Senior Advocate with
Ms. Kshitij Sharma & Mr. Himmat Singh,
Advocates for the petitioner.

Ms. Sheenu Sura, DAG, Haryana,
assisted by ASI Sandeep.

Mr. Rajiv Anand, Advocate for the complainant.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of anticipatory bail in a case registered vide FIR No.67 dated 1.3.2019 under Sections 384/406/420/500 IPC at Police Station Khedki Daula, District Gurgaon.
2. The FIR in question was lodged at the instance of Chirag Ghai, authorized representative of M/s Spaze Towers Private Limited, Gurugram wherein wherein it is stated that the said company is engaged in business of real estate development. It is alleged that the accused approached the complainant while representing that he was owner in possession of land measuring 27 kanals 3 marks (3.4 acres approximately) situated near village Naurangpur, Gurugram and was desirous of developing some real estate project over the said land and thus sought the expertise of the complainant company for the same. Consequently, a Collaboration Agreement dated

21.8.2008 was executed alongwith a general power of Attorney of even date which was executed in favour of Vipin Sharma and Deepak Kumar. A short term interest free loan of ₹ 50 lacs was also advanced by the complainant to the accused. Subsequently, upon mutual consent of both the parties, the said contract was cancelled and a cancellation agreement dated 31.7.2009 was executed. Later, in the year 2010, the accused again approached the complainant for establishment of a commercial project on his land which was accepted by the complainant and a fresh agreement dated 19.6.2010 was executed and the accused admitted that he had a security of ₹ 1,50,00,000/- in his hands. It was agreed that all the expenses on development would be borne by the complainant. The proportion of the rights of the parties were also laid down. A time of 36 months from the date of sanction of building plans was stipulated for the purpose of construction failing which the complainant was to compensate the accused @ ₹ 5 lacs per month, being the loss of rental income.

3. It is further alleged that the accused was not practical in his approach and expressed that the service apartments be also constructed, to which the complainant agreed as a gesture of goodwill and also agreed to bear 50% of the cost of additional floor. A marketing agreement dated 2.11.2012 was also executed amongst the parties to promote the sale of the commercial project. Another agreement dated 16.1.2014 was also executed, particularly for marketing of 27 units. It is further stated therein that the requisite permissions were obtained by the complainant from various statutory authorities by spending huge expenses but the accused without any reason started displaying rigidity and hostility towards the complainant on the

ground that there had been inordinate delay in implementation of the project and claimed that he was entitled to be financially compensated. The complainant alleges that the accused was trying to take undue advantage of the delays which had occurred for reasons beyond the control of the complainant and was blackmailing as a substantial construction had been raised on the project. It is stated that there was delay in getting the clearance from the environment authorities as the authorities had not been functional for a considerable span of time and taking advantage of the same, the accused filed a complaint through RERA, Gurugram against them though the same was to be resolved by way of arbitration as per arbitration clause and agreement dated 19.6.2010. Subsequently, the said complaint was dismissed by RERA, Gurugram. It is alleged that the accused also initiated proceedings before NCLT and also got issued a public notice in newspaper to defame the complainant in an unwarranted controversy. The complainant later came to know that the accused had also executed a deed of cancellation on 21.12.2018 and had got registered the same in the office of Sub-Registrar, Manesar, though general power of attorneys executed in furtherance of contractual obligations were irrevocable in nature. It is, thus, alleged that the accused had cheated and defrauded the complainant and had also made slanderous attack on him, thus, defaming him in the eyes of the society at large.

4. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the instant case and that in any case even if the allegations, as levelled in the FIR, are taken to be correct, the same at best would constitute a civil liability and that the complainant i.e. M/s Spaze

Towers Private Limited, Gurugram, in any case, had already approached the Commercial Courts at Gurugram by way of filing a petition under Section 9 of the Arbitration and Conciliation Act. It has further been submitted that the matter was thoroughly enquired into and investigated by the police and an untraced report had been filed which virtually demolishes the case of the complainant.

5. Opposing the petition, the learned State counsel assisted by counsel for the complainant has submitted that the facts of the case clearly indicate that the petitioner, right from the very inception of the agreement had fraudulent intentions and his very purpose was to get his land developed by utilizing the expertise and finances of the complainant and has thereafter chosen to kick out the complainant. The learned State counsel has further submitted that although the petitioner had been able to get a maneuverd report from the police leading to filing of a untraced report but the trial Court upon examining the same has ordered for further investigation and that the petitioner cannot get any leverage from the same. The learned State counsel has, however, informed that pursuant to interim directions, the petitioner has since joined investigation.
6. I have considered rival submissions addressed before this Court.
7. The facts and circumstances would indicate that the matter arises out of an agreement having been entered into amongst the parties pertaining to development of piece of land measuring 27 kanals 3 marks (3.4 acres approximately) situated near village Naurangpur, Gurugram owned by the accused on which the complainant was to spend a substantial amount for its development and both the parties were to share the profits in a certain

proportion which had been duly stipulated in the agreement. Further, it was stipulated that in case of inordinate delay in development of the project, the complainant was to compensate the accused for the loss incurred by him on account of not being able to rent out the land to anybody else. At this stage, it will rather be difficult to hold that the petitioner had fraudulent intention right from the inception of the agreement. Rather, the facts do give a strong indication that it is a matter mainly of a civil nature wherein there has been breach of certain conditions. The fact that a untraced report was filed or that the Illaqa Magistrate has ordered for further investigation cannot be made a basis as to whether the instant case is a case of civil liability or criminal liability. In any case, since the petitioner has already joined investigation and the matter is based mainly on documentary evidence, the custodial interrogation of the petitioner is not warranted.

8. The petition, as such, is accepted and interim directions issued by this Court vide order dated 16.7.2019 are hereby made absolute, subject to the condition that the petitioner shall join investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.
9. It is, however, specifically clarified that the observations made above have been made solely for the purpose of deciding the bail application and are not to be construed to be any kind of expression on the main case.
10. The petition stands accepted accordingly.

24.8.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No