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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35001-2021 (O&M)
Date of Decision: 08.11.2021

Sushil Kaudinya and another

.. Petitioners

Vs.

State of Hayrana

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Karan Pathak, Advocate for the petitioners.

Mr. Sukhdeep Parmar, DAG, Haryana.

Mr. Alok Mittal, Advocate and
Mr. Vinay Kumar Pandey, Advocate
for the complainant.

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Manoj Bajaj, J. (Oral)

Petitioners have filed this petition under Section 438 Code of Criminal Procedure for grant of anticipatory bail in case FIR No.0497 dated 26.07.2021 under Sections 406 and 420 IPC (Sections 467, 468, 471 and 120-B IPC added later on), registered at Police Station Sector-10, District Gurugram, who apprehended their arrest at the hands of Police, in the above FIR.

The above FIR was registered on the statement given by Rajat Goel, which reads as under:-

"*That the FIR has been lodged on the complaint of Rajat Goel of M/s MRG Infra build Pvt. Ltd. (hereinafter called as MRG) alleging huge fraud and repeated cheatings and causing loss of more than 5 Crores to M/s MRG of the complainant by Murliwala Realcom Pvt. Ltd. (hereinafter referred as Murliwala) and Maxworth Infrastructures Pvt. Ltd. (hereinafter called as Maxworth) through their directors Amarjeet Dhillon and Sushil Kaudinya. In June 2018 Amarjeet Dhillon and Sushil Kaudinya approached the company for*

> *investment into real estate projects developed by them in Sector 10-A and 89 and they entered into a commercial business relationship through their companies detailed in the complaint. The MRG entered into a business relationship in good faith to help the accused persons to complete their real estate projects in Gurugram. In January, 2021, the accused stopped taking their calls and avoiding communications. During office visit of the accused, the complainant was informed that there was some delay in the project but confirmed that they were closed to complete the project and obtain completion certificate from the concerned authorities. However, on the said visit the complainant came to know that the accused persons through their companies were trying to create 3rd party rights in respect of complainant's flats and the 3rd party was getting interior fit outs and furnishing done in flat No.701 without their consent. When the accused persons were requested to stop the interior work, representative of the complainant company was manhandled and forced to leave the building site. The accused persons are avoiding the communication. In march, 2021 the complainant company officials discovered an auction notice dated 28.8.2019 of Indian Bank wherein it was found that three of their allotted units D-903, C-901 and C-904 were being auctioned to recover money under a separate loan facility professionally run Real Estate Development entity. In addition, B-801 has been allotted also to one Tarun Kumar. These third-party rights have been created in complainant's flats and committed forgery by making false documents with criminal intent causing damage/injury to the complainant by availing loan facility from the bank with intent to commit fraud against MRG. It was also discovered that National Company Law Tribunal through order dated 1.2.2021 had allowed for the insolvency proceedings for Maxworth which further jeopardizes complainant's interest in the collateral assets including pledge of shares in both the companies of the accused. The complainant MRG had repeatedly expressed that they want to pay their balance dues in relation to 20 flats purchased by them and to take possession. The accused Amarjeet Dhillon and Sushil Kaudinya repeatedly conspired to cheat MRG and its shareholders and management in different ways. There is no trace of the funds paid by MRG to the accused. The complainant MRG has been strategically trapped by the accused persons. On 13.07.2021 allotment of flats was cancelled and amount forfeited."*

Learned Senior counsel for the petitioners has invited the attention of the Court to the order dated 03.09.2021, whereby while issuing notice of motion to the respondent-State, the interim protection was extended to the petitioners. The said order reads as under:

> *"Learned Senior counsel contends that the petitioners are directors of two construction companies, namely, Murliwala Realcon Private Ltd and Maxworth Infrastructures Private Ltd, who were developing housing project namely, 'Affordable Group Housing Society' and in August, 2018, the complainant agreed to take over the project for a total consideration of Rs.55.96 crores and against this a sum of approximately Rs.43 crores was paid to the land owners with whom the petitioners had collaborated to develop the said housing society. According to learned Senior counsel, the complainant still owes a sum of Rs.12.76 crores against the said deal and the petitioners had taken effective steps to get the development license transferred in their favour.*
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> *He submits that similarly, another project consisting of 20 built up flats by petitioners' company was also purchased by the complainant for a total sale consideration of Rs. 10.16 crores and against that a sum of Rs.3.25 crores was paid to the seller, whereas an amount of Rs.7.16 cores is outstanding. Mr. Rai, learned Senior counsel has drawn the attention of the Court to the admissions in the FIR itself, wherein the complainant has expressed its willingness to complete the business deal and to make the balance payment to the accused towards the purchase price. He submits that the dispute if any, between the parties is purely of civil nature and prosecution case is based upon documentary material, therefore, custodial interrogation of the petitioners may not be necessary.*
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> *Notice of motion 16.09.2021.*
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> *At this stage, Mr. Sukhdeep Parmar, DAG, Haryana accepts notice on behalf of the respondent-State.*
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> *At this stage, Mr. Satyender Goyal, Advocate and Mr. Vinay Kumar Pandey, Advocate appear on behalf of the complainant and pray for two weeks time to file reply.*
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> *Meanwhile, the petitioners shall join the investigation and would come present as and when called for and in the event of arrest, the petitioners shall be admitted to interim bail on their furnishing personal and surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioners shall also abide by the conditions as specified under Section 438(2) Cr.P.C."*

Learned Senior counsel has further submitted that in deference to the above directions given by this Court, the petitioners have joined the investigation on number of occasions and have cooperated with the Investigating Officer. He submits that the entire dispute between the parties relates to the commercial transactions, which is not only civil in nature, but is also founded upon documentary material, therefore, the custodial interrogation of the petitioners may not be necessary. He prays for anticipatory bail.

The petition is contested by the respondent-State as well as the complainant, who have filed their respective replies dated 13.09.2021 and 05.10.2021.

Learned State counsel assisted by ASI Anil Kumar has referred to the reply filed by way of affidavit of Pankhuri Kumar, HPS, Assistant Commissioner of Police, Staff Officer, Gurugram and argued that the petitioners had agreed to transfer 20 flats in favour of complainant-company for a total sale consideration of Rs.10.36 crores, and a sum of Rs.3.20 crores was received by them pursuant to the buyer agreement dated 14.09.2018. Learned State counsel has further argued that out of these flats, 5 were either already sold or under mortgage with the bank, which had extended the finance facility to the buyers (third parties). Apart from it, 3 flats were mortgaged with the Indian Bank.

Mr. Parmar, learned State counsel has argued that at the time of entering into the transaction, a register was shown to the complainant by the representatives of the accused to misguide them about the property in question by claiming it to be free from all encumbrances. Learned State counsel has pressed for the custodial interrogation of the petitioners, which according to him is necessary for recovering the amount of Rs.3.20 crores and the said register maintained by the accused. He prays for dismissal of the petition.

Mr. Alok Mittal, Advocate appearing on behalf of the complainant has also opposed the prayer on the same lines and argued that since the material information regarding the above status of flats was not disclosed to the complainant, therefore, the petitioners have committed the offence of cheating by inducing them to enter into the said agreement. Mr.

Mittal, learned counsel has further argued that after registration of the case, other offences punishable under Sections 467, 468, 471 and 120-B IPC were also added and as the petitioners have not prayed for anticipatory bail in respect of these offences, therefore, the petition deserves to be dismissed.

At this stage, Mr. R.S. Rai, learned senior counsel has pointed out that prior to the agreement regarding 20 flats between the parties, another transaction was entered into between the complainant and the petitioners in June, 2018, whereby the project, namely, 'Affordable Group Housing Society', Sector-89, Gurugram, being developed by accused companies was taken over by complainant company, and in furtherance to that contract, the petitioners took steps to get the licence transferred in favour of the complainant from the office of the Directorate of Town & Country Planning, Haryana. He states that the said request has been approved in-principle and in this regard, he has invited the attention of the Court to the communication dated 26.02.2019 (Annexure P-4). He has vehemently argued that against the total sale consideration of this deal, a balance sum of Rs.12.76 crores still remains to be paid by the complainant to the accused companies, and the petitioners are also willing to settle the accounts and dispute with the complainant. He further states that the petitioners served legal notice dated 09.07.2021 (Annexure P-8) upon the complainant, thereby asking the complainant to pay the balance amount of Rs.12.76 crores. He has further highlighted that another notice dated 13.07.2021 (Annexure P-9) was also served, whereby cancellation of agreement relating to 20 flats and forfeiture of earnest money, was conveyed to the complainant. Learned senior counsel has argued that in response to the legal notices, the complainant has retaliated by falsely implicating the petitioners in this case. According to him, the flats which were mortgaged with the bank are no more with the third parties because of non-payment of the loan amount and have been taken over by the bank. He states that in case, the balance amount payable by complainant is paid to the petitioners, the said flats would be got released from the bank after clearing the dues in order to transfer them in favour of the complainant. He reiterates his prayer for anticipatory bail.

After hearing the learned counsel for the parties and considering the above background of the case, this Court is of the opinion that dispute between the two rival construction companies relates to the agreement(s) entered into by them in June, 2018 and September, 2018 and both have laid their respective claims against each other for breach of contract and recovery of money. Though, the allegations in the FIR relate to deal regarding 20 flats agreed to be transferred by the accused company, but admittedly, only a sum of Rs.3.20 crores was paid by the complainant in September, 2018 against a total sale consideration of Rs.10.36 crores, who is still ready and willing to complete the contract, and is also ready to make the balance payment to the accused company. Admittedly, after execution of this contract in the year 2018 till the registration of the case, no steps were taken by the complainant seeking implementation of the said contract and the said deal is incomplete as far as transfer of title is concerned. The accused company has also expressed its intention to amicably conclude the deal, as according to it, the complainant is yet to make the balance payment of consideration towards their previous agreement relating to 'Affordable Group Housing Soceity', Sector-89, Gurugram.

During the course of hearing, learned State counsel has fairly stated that the Investigating Officer has confined the investigation relating to the allegations contained in the FIR and has not looked into the earlier transaction between the parties. Interestingly, the learned counsel for the complainant has also not disputed the previous agreement pertaining to 'Affordable Group Housing Society', Sector-89, Gurugram, but has stated that the stage of payment of balance amount of Rs.12.76 crores is yet to come. However, he has not elaborated as to when the said payment is to be made. This clearly means that the complainant also has to clear its debt against the accused company.

The grounds raised on behalf of the learned State counsel that custodial interrogation of the petitioners is necessary to recover the amount of Rs.3.20 crores and also to recover the forged register maintained by the accused claiming the subject property to be free from any charge do not appear to be justified, as *prima facie*, the dispute between the two companies is regarding their respective rights flowing from the alleged agreements and the same is founded upon documentary material. The rights of the parties and issues regarding implementation of the contracts can only be raised before the civil Court, but none of the parties have filed any suit either for specific performance of the contract or for recovery of money. It has also not been disputed by learned State counsel that the agreement/mortgage documents of the flats have already been collected from the concerned banks. Thus, this Court has no hesitation in holding that the custodial interrogation of the petitioners is not necessary.

Consequently, without meaning any expression of opinion on the merits of the case, the petition is allowed and order dated 03.09.2021 is made absolute.

(MANOJ BAJAJ)
JUDGE

08.11.2021
Jasmine Kaur

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No