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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M No.38149 of 2021 (O&M)

Date of decision: 14.09.2021

Dinesh Kumar

....Petitioner

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

**Present:** Mr. R.S. Rai, Sr. Advocate  
with Mr. Anurag Arora, Advocate  
for the petitioner.

**ARVIND SINGH SANGWAN J. (Oral)**

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.0123 dated 22.07.2021 registered under Sections 420 IPC and 36(1) of the Punjab Apartment and Property Regulation Act, 1995 at Police Station Sadar Ludhiana, District Ludhiana.

Learned senior counsel for the petitioner has submitted that as per the allegations in the FIR, registered on a complaint given by Gaurav Gupta, it is stated that the complainant is a *bona fide* purchaser/owner of Plot No.460, Golden Enclave, Ludhiana, and at the time of execution of the sale deed, the accused persons have given a copy of licence dated 12.11.2008. It is further stated that it was represented by the accused persons that the colony is approved by GLADA, Ludhiana, vide licence dated 12.11.2008 but as per the RTI information received from the GLADA, Ludhiana, the completion certificate is not received till date. It is, thus, submitted that the petitioner and other accused, so named in the FIR, have committed the

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offence of cheating.

Learned senior counsel for the petitioner has further submitted that thereafter, the opinion of the District Attorney, was obtained and the FIR under Section 420 IPC read with Section 36 of the Punjab Apartment and Property Regulation Act, 1995, was registered.

Learned senior counsel for the petitioner has referred to the provisions of Section 38(1) of the Punjab Apartment and Property Regulation Act, 1995, to submit that no prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the competent authority or any person authorized in this behalf by the competent authority. It is further submitted that the complainant is not competent to register the FIR under Section 36 of the Act as he is not the authorized person as per Section 38 of the Punjab Apartment and Property Regulation Act, 1995.

With reference to the offence under Section 420 IPC, it is submitted that even on an earlier occasion, 02 FIRs were registered i.e. FIR No.145 dated 08.08.2015 under Sections 420, 465, 467, 471, 120-B IPC and Punjab Apartment and Property Regulation Act, 1995, and FIR No.140 dated 29.07.2015 regarding 02 colonies. It is further submitted that in both the FIRs, which were registered at the instance of GLADA, Ludhiana, the allegations were identical in nature that the plots have been sold with regard to the colonies, which are yet to be approved/regularized and therefore, the accused persons have cheated the purchasers.

Learned senior counsel for the petitioner has further submitted that on investigation, both the FIRs were cancelled and a

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cancellation report is submitted before the Illaqa Magistrate, which is pending consideration till date. It is next argued that the licence which was granted to the developers was later on, cancelled on 10.12.2015 on account of non-deposit of social infrastructure fund and urban development fund.

Learned senior counsel for the petitioner has also argued that similar conditions laid down by the Government of Punjab, have already been struck down by this Court in CWP No.23053 of 2010 and CWP No.16689 of 2010 and the Government has already filed SLP before the Hon'ble Supreme Court, which is pending consideration. It is also submitted that on similar ground, the petitioner has also filed CWP No.11214 of 2017, which is pending, awaiting the order of the Hon'ble Supreme Court. It is further argued that against the order dated 11.06.2015 passed by the competent authority, M/s. Damini Resorts and Builders, have preferred an appeal before the Appellate Authority, which was remanded back with the observation that some documents were found to be genuine and some needs to be verified as per the order dated 11.02.2016.

Learned senior counsel for the petitioner has also submitted that post-remand, case is still pending before the Deputy Commissioner as no final decision has been taken and therefore, it cannot be said that the builders have committed any offence. It is also submitted that the petitioner retired from M/s. Dev Builders on 30.05.2015 and from M/s. Damini Resorts and Builders on 01.06.2015. Learned senior counsel for the petitioner has also submitted that later on, the petitioner was given power of attorney to work on behalf of the

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other Directors of the company, who are the brothers and father of the petitioner and therefore, he cannot be held guilty for any lapse on the part of the company as he is only acted as a general power of attorney.

Notice of motion.

Mr. Joginder Pal Ratra, DAG, Punjab who is present in the Court accepts notice on behalf of the respondent – State while Mr. Abhijeet Partap Singh Chaudhary, Advocate has appeared on behalf of the complainant.

Counsel for the State has argued that in the year 2015, the FIRs were got registered by the State, which were later on, cancelled and the cancellation report is pending consideration before the Illaqa Magistrate.

Counsel for the complainant has, however, submitted that the promoters and director of M/s. Dev Builders and Colonizers as well as M/s. Damini Resorts and Builders, have initially allotted allotment letters in the year 2012 to the complainant and some other persons and later on, when the sale deed was executed there is a mention of the licence in the sale deed which is not in existence as the same was cancelled later on.

Counsel for the complainant has also referred to the order dated 11.06.2015 vide which the Appellate Authority has remanded the case back to submit that it has been noticed in the said order that M/s. Damini Resorts and Builders has applied for compounding of the offence and regularization of the colony on 10.12.2013, however, on verification, some of the documents were not found to be genuine and, therefore, the matter remain pending and ultimately, vide order dated

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11.06.2015, the regularization granted to M/s. Damini Resorts and Builders, was cancelled.

Counsel for the complainant has also submitted that though the complainant has given the right of title vide sale deed and some of the similarly situated persons have also given sale deed, however, in the absence of a proper licence, the representation given by the petitioner and other Directors, amounts to cheating.

After hearing the counsel for the parties, I find merit in the present petition. Though, it is admitted case of the parties that the licence of regularization was given to the builders at one point of time, however later on, on account of non-deposit of the 02 funds, referred hereinabove, the same was cancelled and the petitioner has challenged the same by way filing writ petition which is pending before this Court as in some other writ petitions, demand by the State of Punjab for the 02 funds were held to be illegal and even, the SLP is pending, a fact which is not disputed, before this Court. It is also not disputed that 02 FIRs were registered against the petitioner by the GLADA, Ludhiana, in the year 2015 with the allegations of cheating with the purchasers like the complainant and later on, on investigation the same were cancelled and the same is pending before the Illaqa Magistrate. In view of the same, one of the point involved in the present FIR during the investigation would be, whether the second FIR on similar grounds is maintainable or not as the complainant had every right to file a protest petition in the cancellation report, filed in the earlier FIRs and whether complainant has a right to register FIR under Section 36 of the Punjab Apartment and Property Regulation act, 1995, without any authority

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under Section 38 of the Act.

Accordingly, the present petition is allowed and the petitioner is directed to appear before the Investigating Officer within a period of 10 days from today, to join the investigation and he shall be released on interim bail on furnishing bail/surety bonds subject to the following conditions:-

1. *He shall make himself available for interrogation by a police officer as and when required;*
2. *He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and*
3. *He shall not leave India without previous permission of the Court.*

Disposed of, accordingly.

(ARVIND SINGH SANGWAN)  
JUDGE

**14.09.2021**

*yakub*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No