

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

Decided on: 04.01.2021

1. CRM-M No.43349 of 2020 (O&M)

Som Parkash

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M No.43587 of 2020 (O&M)

Dharmender Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ashok Malhotra, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. P.K.S. Chugh, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in these petitions is for grant of anticipatory bail to the petitioners namely Som Parkash and his son Dharmender Kumar under Section 438 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.237 dated 02.12.2020, for offence punishable under Sections 406, 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Narwana City, District Jind.

In CRM-M No.43349 of 2020, filed by the petitioner – Som Parkash, the following order was passed on 22.12.2020 by this Court:-

“Learned counsel for the petitioner submits that as

per allegations in the FIR, registered at the instance of Sonu Mittal, it is stated that son of the petitioner namely Devender Kumar had entered into an agreement to sell dated 01.10.2018 for a commercial space in Mohali and received full and final payment of Rs.18.63 lacs, however, the property was owned by the petitioner and he was in conspiracy with his son and did not execute the sale deed. Later on, son of the petitioner issued three cheques, out of which, two cheques were of Rs.5.00 lacs each and one was for Rs.8.63 lacs, for returning the amount, as he was not owner of the property and the same were dishonoured. It is further case of the complainant that he was cheated on the basis of fake power of attorney and the petitioner is directly involved in the case.

Learned counsel for the petitioner further submits that he has instructions to say that son of the petitioner is also facing a complaint under Section 138 of N.I. Act filed by the complainant Sonu Mittal and he will surrender before the police today itself.

Notice of motion for 04.01.2021.

In the meantime, the petitioner is directed to appear before the Investigating Officer within a period of 10 days to join 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.

It is made clear that if son of the petitioner failed to surrender before the police authorities today itself, interim protection shall stand vacated.”

Thereafter, the 2nd petition i.e. CRM-M No.43587 of 2020, was filed by the petitioner – Dharmender Kumar, which was listed on 23.12.2020 before the Co-ordinate Bench of this Court and the same was adjourned to be taken up with the present petition.

Brief facts of the case as per the allegations in the FIR, registered at the instance of Sonu Mittal are that both the accused are residents of Narwana and are known to each other. The accused persons are doing the business of property dealing and they approached the complainant that they want to sell a commercial property in S.A.S. Nagar, Mohali, Punjab. It is further stated in the FIR that when the complainant asked the accused to bring the original sale deed of the property to write an agreement to sell, Dharmender told him that his father will put his thumb-impressions and thereafter, the complainant believing him made the full and final payment of Rs.18.63 lacs on 01.10.2018.

Dharmender informed the complainant that he will bring his father to Mohali for execution of the sale deed on or before 10.03.2019 and also given an affidavit to this effect. However later on, neither the sale deed was executed nor the money was returned.

On further enquiry, the accused – Som Parkash told the complainant that he has given the power of attorney to his son Dharmender and therefore, he is not in a condition to execute the sale deed and asked for some more time. The accused kept on delaying the

matter till April, 2020 but having failed to do so, the accused further took the forcible possession of the property, which was given to the complainant at the time of execution of the sale deed.

The arguments on behalf of counsel for the petitioner – Som Parkash are already noticed in the aforesaid order dated 22.12.2020. The counsel for the petitioner – Dharmender has argued that in fact the agreement for sale is a false and concocted document and the complainant has already filed a complaint under Section 138 of the Negotiable Instruments Act on the basis of the cheques of Rs.18.63 lacs issued by Dharmender as the same was dishonoured by the Bank and therefore, the FIR is not maintainable.

Counsel for the petitioner has further argued that the FIR has been registered just to put pressure on both the petitioners to return the amount back and the complainant had the remedy to approach the Civil Court.

Counsel for the State assisted by counsel for the complainant has however, opposed the prayer for bail on the ground that neither the petitioner – Som Parkash, who was granted interim bail on 22.12.2020, has joined the investigation nor the petitioner – Som Parkash has complied with his statement made before the Court that his son Dharmender will surrender before the police.

Counsel for the complainant has further argued that both the accused from the very beginning had the intention to cheat the complainant from the date of agreement to sell as not only the money of the complainant has been mis-utilized but the possession of the premises which was given to the complainant, has been taken forcibly.

Counsel for the complainant has further argued that as part of the conspiracy between the petitioners though, Dharmender has given cheque of the amount of earnest money but knowingly that the same will be dishonoured, the accused have tried to create a defence that the complainant has filed a complaint under Section 138 of the Negotiable Instruments Act, which is pending, the FIR is not maintainable.

After hearing the counsel for the parties, considering the fact that the petitioner – Som Parkash was granted the interim bail but has failed to join the investigation, I find no ground to extend the concession of interim bail to the petitioner – Som Parkash.

Though the undertaking given by the petitioner – Som Parkash is not binding on his son Dharmender, however, considering the allegations in the FIR, which are directly against Dharmender who on behalf of his father has accepted the money from the complainant and thereafter, handed over the possession of the property but later on in a calculated move to cheat the complainant not only the possession was forcibly taken back but the cheques were given knowingly that the same will be dishonoured, I find no ground to grant the concession of anticipatory bail to the petitioner – Dharmender, as well.

In view of what has been discussed hereinbefore, both these petitions are dismissed accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

04.01.2021

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Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No