IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.2044 of 2022 (O&M)
Date of Decision: 07th March, 2022.

Sanjay Gupta & Another

………Petitioners

Versus

State of Haryana & Another

………Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. R.S.Rai, Senior Advocate and
Mr. Akshay Bhan, Senior Advocate with
Mr. Harkesh Manuja, Advocate,
for the petitioners.

Mr. Deepak Sabharwal, Additional Advocate
General Haryana, for respondent No.1-State.

Mr. Vikram Chaudhari, Senior Advocate with
Ms. Hargun Sandhu, Advocate,
for respondent No.2-complainant.

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MEENAKSHI I. MEHTA, J.

Apprehending their arrest in the criminal case arising out of the FIR bearing No.0006 dated 05.01.2022 registered at Police Station Sadar Panipat, under Sections 406 and 420 IPC, both the petitioners have joined hands to prefer this petition for seeking the relief of anticipatory bail.

Bereft of unnecessary details, the allegations, as levelled by complainant-Attar Chand Mittal in the subject FIR, are that he and his sons as well as the petitioners are the Directors/Share-holders in M/s Real Height Developers Private Limited Company. He and his family members owned the land measuring 50 *bighas* 16 *biswas* 10 *biswanshi* in Sector 40 within the area of Shimla Maulana in District Panipat and they wanted to develop an affordable Group Housing Colony on the same. The petitioners offered and agreed to invest an amount of Rs.8 crore of their share in the said project and they sworn an affidavit to this effect on 03.08.2017 while issuing post-dated cheques worth total sum of Rs.9,73,20,000/- towards the payment of the said amount along-with interest thereon. Thereafter, the petitioners offered to purchase their (complainant's and his family members') entire share in the project/business of the Company and they executed a Memorandum of Understanding (Agreement) {for short 'MOU'} on 07.02.2018 for this purpose while joining one Naresh Kumar as a share-holder whereby they agreed to pay the total amount of Rs. 60 crore in 05 (five) half-yearly instalments and issued the advance cheques to them in respect thereof. They paid the first instalment of the said amount on 30.09.2018 and he and his family members transferred their corresponding shares in the Company in their (petitioners') favour. However, they made only part payment of the second instalment and also did not pay the balance amount as due from them despite the issuance of several notices to them in this regard. The post-dated cheques, as initially issued by the petitioners towards their share of investment in the said project, i.e Rs.8 crore along-with interest thereon, were presented in the concerned Banks on the due dates but the same were dishonoured and thus, the petitioners, have grabbed their property as well as the business in a well-orchestrated conspiracy and they have also defrauded the investors by selling the Flats, as raised on the afore-said land.

Short-reply has already been filed on behalf of respondent No.1-State, by way of the affidavit of the Additional Superintendent of Police, Samalkha, District Panipat.

I have heard learned Senior counsel for the petitioners as well as learned State counsel for respondent No.1-State along-with learned Senior counsel for respondent No.2-complainant in the present petition and have also perused the file thoroughly.

Learned Senior counsel for the petitioners have contended that the complainant has already preferred a criminal complaint against the petitioners under Section 138 of the Negotiable Instruments Act in respect of the alleged dishonour of the cheques issued by them towards the investment of the said amount of Rs.8 crore in the project and he has also filed a civil suit for the recovery of the amount, as claimed by him to be outstanding against the petitioners in the above-said transaction. They have also referred to Annexure P-26, i.e the copy of the report submitted by the Incharge, Special Detective Staff, Panipat, on 13.05.2021 in respect of the complaint preferred by the complainant-informant earlier and have pointed out that it has been reported therein that the dispute qua the monetary transaction was found to be of civil nature and therefore, the complaint be filed and they have contended that at the most, the afore-discussed dispute between the complainant and the petitioners can be termed to be civil in nature and the complainant has already resorted to the remedy for the same by filing the said civil suit and therefore, the initiation of the instant criminal proceedings in respect thereof, rather, shows the mala-fides on the part of the complainant himself and moreover, the complainant and his sons have transferred their share-holding corresponding to the amount paid by the petitioners to them. Lastly, they have contended that the present case is based on the documentary evidence which can always be available to the Investigating Agency and therefore, the custodial interrogation of the petitioners is not required and in these circumstances, they (petitioners) deserve the relief as sought in this petition. To buttress their contentions, they have placed reliance upon ***Mitesh Kumar J.Sha vs. The State of Karnataka & Ors. Criminal Appeal No.1285 of 2021 (arising out of SLP (Crl.) No.9871 of 2019)*** and ***Sohit Khosla and another vs. State of Punjab 2020 (4) RCR (Criminal) 562 (P&H).***

Per-contra, learned State counsel and learned Senior counsel for respondent No.2 have argued that the conduct of the petitioners in the entire above-detailed transaction, reflects their intent, from the very beginning, to cheat the complainant and his family members as the said post-dated cheques, issued by them towards the investment to the extent of their share in the project, were dishonoured and then, they executed the MOU on 07.02.2018 for purchasing the shares of the complainant and his family members in the Company for a sum of Rs.60 crore and they gained control over the business and all other affairs of the Company by getting the Resolutions Annexures P-6 & P-7 passed on the same day by misusing the faith and trust as reposed by the complainant in them but after making payment of the first instalment and only the part payment of the second instalment of the afore-said amount, they did not pay even a single penny to the complainant party and went on to construct the Flats on the above-said land and have already sold 724 Flats to the investors without sharing the profit, earned therefrom, with the complainant and his sons and the said conduct on their part invites the criminal action also.

Concededly, the afore-described land was, initially, owned by the complainant and his family members and the petitioners had agreed to pay a sum of Rs.8 crore to them as per their (petitioners') share in the project of the Company for developing a residential Colony over the same and they had issued the post-dated cheques towards the payment of this amount along-with interest thereon. The said cheques, when presented in the concerned Bank, were allegedly dishonoured.

Further, the petitioners claim that the MOU, i.e Annexure P-3, was executed on 07.02.2018 for taking over the shares of the complainant and his other family members in the business of the Company, for a sum of Rs.30 crore whereas Annexure A-1 is the copy of another MOU, as shown to have been entered into between the parties on the same day, i.e 07.02.2018 wherein the agreed amount is shown to be Rs. 60 crore. In Para No.23 of the order Annexure P-2 as passed by the Court below qua the dismissal of the application moved by the petitioners for seeking the relief of pre-arrest bail, it has specifically been observed that the petitioners claimed and placed the copy of the MOU on the file showing the value as

Rs.30 crore whereas during the course of arguments, the complainant produced the copy of the MOU on the record mentioning the value to be Rs.60 crore and both these documents bear the date 07.02.2018 and are duly signed by the complainant, the accused and others but however, the accused, i.e the petitioners, had no-where mentioned in their bail application that another MOU was executed on the same day and it amounted to the concealment of the facts from the Court.

In the instant petition also, the MOU Annexure A-1, mentioning the value of the share-holdings of the complainant and his family members as Rs.60 crore, has been produced on the file by respondent No.2-complainant and the petitioners have not disclosed about its execution by them. The concealment of the afore-said fact by the petitioners, initially, before the Court below and then, in this petition also, in itself, speaks volumes of their conduct and intent especially in the circumstances when they have neither denied the execution of the said MOU, i.e Annexure A-1 nor have explained the circumstances requiring the execution of said two MOUs on the same day. To add to it, the cheques bearing Nos.000099, 000105, 000107, 000109, 000079, 000080, 000085, 000086, 000087, 000088, 000089 and 000090, which find mention amongst the details of the cheques in MOU Annexure A-1, have not been described in the MOU Annexure P-3 as claimed by the petitioners to have been executed for the sum/value of Rs.30 crore and out of the said cheques, two cheques bearing No.000067 and 000068 are also stated to have been got encashed by the complainant and his sons.

To cap it all, Annexures P-6 and P-7 are the copies of the Resolutions passed qua the handing over of the control of the business and other affairs of the Company to the petitioners on 07.02.2018, i.e the day when the above-said MOUs were executed meaning thereby that the petitioners took over the control of the entire business of the Company without making the actual payment of the amount of the value of the share of the complainant party in the same and as categorically alleged in the FIR itself, they (petitioners) have not paid the balance amount of the second instalment as well as the subsequent instalments thereof in terms of the MOU. The above-discussed facts and circumstances unequivocally reflect the intent of the petitioners in handling/carving out the entire disputed transaction which cannot be termed to be exclusively having the flavour of civil action. It being so, mere pendency of the civil suit, as stated to have been filed by the complainant against the petitioners for the recovery of the balance amount and also of the criminal complaint, as preferred by him qua the dishonour of the afore-said post-dated cheques issued by the petitioners, cannot be taken to be a bar to the present criminal proceedings because it is well-settled that if a single act or omission on the part of an individual invites criminal as well as civil action, then the aggrieved person/victim can choose to pursue anyone out of the same or both the actions in respect thereof. As regards the report qua the enquiry in respect of the earlier complaint as moved by the complainant, i.e Annexure P-26, it simply shows that the said complaint had been filed while observing that the money transaction between the parties was found to be of civil nature.

However, the same does not debar the investigating agency to further probe the matter.

Even if the complainant and his sons are stated to have transferred their shares in proportion to the amount as received by them, even then the fact remains that as discussed earlier, Resolutions Annexures P-6 & P-7 were passed on the day of the execution of the MOU itself and thus, the petitioners gained control over the entire business of the Company and went ahead with the construction of the Flats on the said land initially owned by the complainant and his family despite the dishonour of the cheques, issued by them (petitioners) to pay for their share in the project and they have also sold as many as 724 Flats and they have not placed any material on the record to show the payment of the amount of the profit, earned out of the same, to the complainant party as per their existing shares in the business of the Company.

Though, the dispute in the present case involves the execution of certain documents as mentioned above but keeping in view the facts that two MOUs are stated to have been executed by the parties on one day for the same purpose and the amount of the value of the share holding of the complainant and his family members in the Company as mentioned in one of these MOUs, is double the amount, as mentioned in the other MOU, the possibility of the requirement of the custodial interrogation of the petitioners to elicit the truth qua the same, cannot be ruled out.

The observations as made by the Apex Court in ***Mitesh Kumar J.Sha (supra)*** and by this Court in ***Sohit Khosla and another***

(supra) do not come to the rescue of the petitioners to seek the relief of pre-arrest bail in this case as the facts and circumstances of the afore-cited cases are distinguishable from those of the present one. In ***Mitesh Kumar J.Sha (supra),*** the Apex Court had dealt with the appeal arising out of the order passed by the High Court qua the dismissal of the petition moved by the appellants for seeking the quashing of the FIR registered against them as well as the proceedings arising therefrom and the charge-sheet had also been presented against them whereas in this case, the petitioners are seeking the relief of anticipatory bail and thus, the investigation is still at the nascent stage. Then, in ***Sohit Kholsa and another (supra)*** also, the new facts were added in the case by registering two DDRs subsequently and it was also observed that the case was based on documentary evidence but in the instant case, as discussed earlier, two different MOUs have been relied upon by the complainant and the petitioners to substantiate their respective versions qua the value of the share of the complainant party in the business of the Company and the truth qua the same is required to be unearthed. Moreover, it has been observed by the Apex Court in ***Megh Singh vs. State of Punjab 2003(4) RCR (Criminal) 319*** that "*circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact based.*"

Keeping in view the above-discussed facts and circumstances as well as the gravity of the offence as alleged to have been committed by the petitioners, this Court is of the considered opinion that they (petitioners) do not deserve the relief of anticipatory bail. Resultantly, the petition in hand stands dismissed accordingly.

However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the case.

(MEENAKSHI I. MEHTA)
JUDGE

07th March, 2022.
seema

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*