IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CRM-M-10161-2022** (O&M)

Mukesh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

(2) **CRM-M- 10162-2022** (O&M)

Shiv Narayan ...Petitioner

Versus

State of Haryana ...Respondent

Date of Decision:- 14.9.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Aditya Arora, Advocate for the petitioner (s).

Mr. Arun Beniwal, DAG, Haryana, assisted by ASI Randeep.

Mr. Gunjan Mehta, Advocate for the complainant.

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GURVINDER SINGH GILL, J.

1. This order shall dispose off the above mentioned two petitions filed on behalf of Mukesh Kumar and Shiv Narayan seeking grant of anticipatory bail in a case registered vide FIR No. 314 dated 30.12.2020 under Sections 406, 420, 467, 468, 471/120-B IPC at Police Station Sector 6, Bahadurgarh, District Jhajjar.

2. The FIR was lodged on the basis of a written complaint dated 30.12.2020 made by Surender Kumar Sharma, Director M/s Incrafts Innovations Pvt. Ltd., Bahadurgarh, Haryana, the contents of which are reproduced hereinunder :-

> "To,
> The Superintendent of Police,
> Distt. Jhajjar Haryana.
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> Sub: Complaint against (1) M/s Dona Doni Fashion Private Ltd., registered office at Khasra No. 40, Ground Floor, Jharoda Village, Jharoda Majra, City Delhi-110084 (2) Sh. Shiv Narayan Director of M/S Dona Doni Fashion Pvt. Ltd., son of late Sh. Ram Singh, resident of 211, Tagore Park, Near Gurudwara New Deilhi-110009 (3) Sh. Mukesh Kumar, Director of M/s Dona Doni Fashion Pvt. Ltd., son of Late Sh. Ram Singh, resident of 211, Tagore Park, near Gurudwara New Delhi-110009 for criminal conspiracy, cheating, fabrication of documents for the purpose of cheating and criminal breach of tust.
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> Sir,
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> The above named Sh. Shiv Narayan and Sh. Mukesh Kunar, both directors M/s Dona Doni Fashion Pvt. Ltd., in the beginning of May, 2019 through property dealer offered us to sell their built up Industrial Plot bearing No. 75, measuring 1012.50 sq. Mtrs, having 1780.625 sq. Mtrs, RCC constructed Covered Area, situated at Sector 17, HSIIDC, Industrial Estate, Bahadurgarh- 124507, village Jakhoda/Kassar, District Jhajjar, Haryana. At that time, a meeting was arranged by the property dealer at MIE Bahadurgarh and we negotiated with Shiv Narayan and Mukesh Kumar and the property was agreed to be sold for a total sale consideration of Rs. 3 crores. A sum of Rs. 20 lacs was paid by us as a token as a sale consideration to M/s Dona Doni Fashion Pvt. Ltd. on 02.05.2019. At that time, it was disclosed by them that there is a loan of approx. Rs. 2.80 crores from IFCI Venture Capital Funds Ltd. against the said property and they have not repay the said loan. It was further stated by them that in case the Mortgage will sell the said property, they will not be able to fetch the good price and their loan will not be repaid, therefore, they want to sell the said property. It was assured by them that before the final transaction they will repay the entire loan amount to IFCI Venture Capital Funds Ltd. After payment of the aforesaid token amount of Rs. 20 lacs we asked them to bring a letter from IFCI Venture Capital Funds Ltd. to show the actual outstanding amount and on our request, said Shiv Narayan and Mukesh Kumar provided a copy of letter dated 30.06.2019 issued by Poonam Garg, General Manager of IFCI Venture Capital Funds Ltd. wherein it was stated that the total amount of Rs. 2,86,15,968/- is due and outstanding against M/s Dona Doni Fashion Pvt. Ltd. as on 30.06.2019 and they were asked to make the payment to collect NOC. After providing the said letter, the above named Shiv Narayan und Mukesh Kumar, asked for further amount from us in the beginning of Septemer, 2019, On this we asked them to get the outstanding loan verified from IFCI Venture Capital Funds Ltd. Shiv Narayan and Mukesh Kumar assured us that the outstanding amount is as per Letter dated 30.06.2019 and made us talk with one Mr. Sumit, so official of IFCI Venture Capital Funds Ltd., over telephone, who also assured the amount mentioned in the letter dated 30.06.2019

is outstanding amount and NOC can be issued on the payment of the same, on their assurances and confirmations from Sumit, we made a further payment of Rs. 50 lacs to M/s Dona Doni Fashion Pvt. Ltd. on 06.09.2019 with a understanding that they shall deposit the entire amount being paid by us with IFCI Venture Capital Funds ltd. On 09.09.2019, Shiv Narayan handed over a fresh letter dated 09.09.2019 under the signature of Ms. Poonam Garg, General Manager, stating therein the total amount of Rs. 2,90,58,600/- is due on 09.09.2019 and after complete payment NOC can be collected. On the basis of the Letter dated 09.09.2019 issued under the signatures of Ms. Poonam Garg, General Manager, IFCI Venture Capital Funds ltd. and the assurances in respect of the outstanding liability of M/s Dona Doni Fashion Pvt. Ltd. in the loan account given by above said Shiv Narayan Mukesh Kumar and Sumit, we now were under impression that the outstanding liability is Rs. 2,90,58, 600/-. We clearly told Shiv Narayan and Mukesh Kumar that we will make the remaining payment of Rs. 2.30 Crores after deducting TDS within one month however, they have not deposited the said amount with IFCI Venture Capital Funds ltd. Immediately on the transfer of the said amount to their account in the presence of our representative and also asked them to confirm whether they have deposited the amount of Rs. 50 lacs paid by us 06.09,2019 with IFCI Venture Capital Funds Ltd. On our asking Narayan provided us a screenshot of SMS dated 19.09.2019 sent by Narayan to my representative is enclosed with this complaint. Thereafter, transferred an amount of Rs. 2.27 Crores in the account of M/s Dona Doni Fashion Pvt. Ltd. on 07.10.2019 after deducting TDS of the entire sale consideration and immediately upon our transfer, the said amount was deposited by Shiv Narayan with IFCI Venture Capital Funds Ltd. on 07.10.2019 itself and this fact was confirmed by Sumit through an email to M/s Dona Doni Fashion Pvt. Ltd. A Screenshot of the said email was provided by Shiv Narayan to my representative, which is enclosed with this complaint. Thereafter, on and around 20.11.2019, the said Shiv Narayan and Mukesh Kumar told us that the entire loan had been cleared. They asked us to proceed for execution of sale deed of the above said property in our favour assuring us that they will bring the NOC and original title deeds at the time of execution of sale deed and provide the same on the said day only. The above said Shiv Narayan and Mukesh Kumar on behalf of M/s Dona Doni Fashion Pvt. Ltd. executed and got registered a Sale Deed in respect of the above said property in our favour on 25.11.2019, said Shiv Narayan and Mukesh Kumar did not handover NOC and the original previous title deeds to us on the pretext that due to certain technical reasons the same could not be issued from IFCI Venture Capital Funds Ltd. and they will provide the same within two three days. We believed them as the amount of Rs 2.27 crores was transferred by them in our presence to IFCI Venture Capital Funds Itd, and even the acknowledgment/SMS qua deposit of Rs. 50 lacs was also provided to us. Moreover, in the sale deed, it was also declared by the Vendor that the property is free from all sort of the execution of the sale Deed, we on several occasions requested them to provide the NOC and the previous original title deeds but they were taking one after another excuses like technical problems, absence of concerned officials etc. and in March, 2020 due to spread of COVID -19 pandemic lockdown happened. Ultimately, on 09.07.2020 our representatives visited the office of IFCI Venture Capital Funds Ltd., to find out the reasons for not issuing of NOC and title deeds and met Sripaa Choudhary and Sumit. On meeting 09.07.2020, and on further inquires, we came to know that there is still an outstanding amount of Rs. 2.86 crores in the loan account of M/s Dona Doni Fashion Pvt Ltd., with the IFCI Venture Capital Funds Ltd. on this, our representatives confronted Sumit that we had a talk with him on telephone and he confirmed the amount mentioned in the letter dated 30.06.2019 and assured to issue another letter and thereafter, the letter dated 09.09.2019 was issued snowed the officials of IFCI Venture Capital Funds ltd. the said letters. On seeing the letters, the said officials mainly Sumit was shocked at first instance, but thereafter Sumit asked us where are originals of these letters. On this we told him that the original are with Shiv Narayan and Mukesh Kumar. Once, we told that the originals are not in our custody, Sumit changed his stand and stated that it is work of some manipulation. The issuance of the said letters was very much in the knowledge of Sumit. It is quite clear that all the said letters have been forged and fabricated., they have been forged and fabricated with active connivance of the officials of IFCI Venture Capital Funds we made payment respect of this property on the assurances given by Shiv Narayan, Mukesh Kumar and the above said officials of IFCI Venture Capitals Funds Ltd. and the letters issued by them. The above facts make it clear that the intention of Shiv Narayan, Mukesh Kumar and M/s Dona Doni Fashion Pvt. Ltd. was dishonest from very beginning. The said Shiv Narayan and Mukesh Kumar hatched a criminal conspiracy in connivance with the said officials, they fabricated letters dated 30.06.2019 and 09.09.2019 in respect of the said outstanding loan amount and induced us to pay such a huge amount of Rs. 3 crores to M/S Dona Doni Fashion Pvt, Ltd, thus causing a wrongful loss to us and wrongly gain to themselves. And for the purpose of the said cheating, they in connivance with each other fabricated and forged documents dated 30.06.2019 and 09.09.2019 to win out father and to induce us to make such huge payment. It is therefore, requested that a FIR may kindly be registered against all of them for criminal conspiracy, cheating, fabrication of documents for the purpose of cheating and criminal breach of trust and they may be persecuted as per law.

Thanking you, Yours faithfully, M/s Incrafts Innovations Pvt Ltd. Through its Director Sh. Surender Kumar Sharma, Office at: Plot No. 102 Part-A, MIE Bahadurgarh, Haryana List of Enclosures: 1. Copy of letters dated 30.06.2019 and 09.09.2019 2. Copy of screenshot of email 3. Copy of sale deed dated 25.11.2019 4. Copy of sereenshot of SMS dated 19.09.2019."

3. The learned counsel for the petitioners has submitted that even if all the allegations are taken to be correct, no case of cheating or forgery is made out against the petitioners. It has been submitted that the factum of the plot agreed to be sold to the complainant being mortgaged with IFCI Venture Capital Funds Limited as a loan had been raised against said property had clearly been mentioned in the agreement and was never kept concealed from the complainant. It has further been submitted that the allegations pertaining to fabrication of some letter from IFCI Venture Capital Funds Limited will

not attract any offence under Section 467 IPC as it cannot be said that the same had been fabricated and forged so as to deprive the complainant of any property. The learned counsel for the petitioners has submitted that in any case the petitioners, who are both Directors of M/s Dona Doni Fashion Private Limited, had duly executed the sale deed in favour of the complainant and the complainant is owner of the said property and thus, it cannot be said that the petitioners had cheated the complainant in any manner.

4. Opposing the petition, the learned State counsel, assisted by counsel for the complainant, has submitted that while the factum of the property being mortgaged with the IFCI Venture Capital Funds Limited had been mentioned in the 'Agreement to Sell' but subsequently it was represented by the petitioners that the entire loan stood repaid and pursuant to the same the sale deed was executed wherein it was mentioned that the property is free from encumbrances whereas infact an amount of approximately ₹ 2.86 crores was still due to be paid.

5. This Court has considered rival submissions addressed before this Court.

6. It is not in dispute that the agreement entered into amongst the complainant and the petitioners did have a recital regarding a loan having been raised against the property which was mortgaged with IFCI Venture Capital Funds Limited. However, it traspires that the petitioners, after having received an amount of ₹2.97 crores from the complainant while misrepresenting that it is only an amount of ₹2,90,58,600/- which is due, deposited an amount of ₹2.87 crores with IFCI Venture Capital Funds

Limited and represented to the complainant that the entire loan had been cleared and told the complainant to proceed ahead for registration of sale-deed. The accused, while making a false representation on the basis of forged letters from IFCI Venture Capital Funds Limited, convinced the complainant that the property was free from encumbrances and executed the sale deed and it was later that the complainant realised that he had been cheated by the petitioners on the basis of forged and fabricated documents, purported to have been issued by IFCI Venture Capital Funds Limited whereas in fact even after payment of an amount of about ₹ 2.87 crores to IFCI Venture Capital Funds Limited by accused which they had received from complainant, an amount of ₹ 2.86 crores approximately was still outstanding against the property.

7. The learned State counsel has informed that though pursuant to interim directions, the petitioners have joined investigation but they are not cooperating inasmuch as neither they have got the mobile phone recovered from which a copy of the forged letter had been sent to the complainant through Whatsapp, nor have disclosed the particulars of the involvement of any official of IFCI Venture Capital Funds Limited, which is very apparent or as regards the manner as to how the letters have been fabricated. The allegations which are found to be fairly substantiated during investigation would clearly attrract offences under Sections 420 and 467 IPC apart from other offences under IPC.

8. In view of the aforesaid discussion, this Court does not find any special case for grant of anticipatory bail.

9. Both the petitions are sans merit and are hereby dismissed.

10. A photocopy of this order be placed on the file of connected case.

14.9.2022 **(Gurvinder Singh Gill)**
kamal **Judge**

Whether speaking /reasoned Yes / No
Whether Reportable Yes / No