IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18384-2022 (O&M)

(1) Shelly Garg and another ...Petitioners

Versus

State of Haryana ...Respondent

(2) **CRM-M-19116-2022** (O&M)

Pranav Garg and others ...Petitioners

Versus

State of Haryana ...Respondent

Date of Decision:- 19.5.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Rohan Garg, Advocate; Ms. Supriya Garg, Advocate and
Mr. Edward Masih, Advocate for the petitioners

Mr. Deepak Sabharwal, Addl. A.G. Haryana,
assisted by ASI Kailash Chand.

Mr. Akshay Bhan, Senior Advocate with
Mr. Aman Bansal, Advocate and Mr. P.S. Sandhu, 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 Shelly Garg, Lovleen Garg, Pranav Garg, Satish Kumar and Ashwani Kumar seeking grant of anticipatory bail in a case registered against them vide FIR No. 117 dated 15.4.2022 under Sections 406, 409, 420, 468, 471, 506/120-B IPC at Police Station Sector 17, District Faridabad.

2. The FIR was lodged at the instance of Vikas Aggarwal which was lodged pursuant to an order passed by the Area Magistrate on an application filed by the complainant under Section 156(3) Cr.P.C. It is the case of the complainant that he was one of the Directors of M/s Swastik Automech Private Limited (in short hereinafter referred to as M/s Swastik Automech Company) and is also founding member and Managing Director of the company right from the very inception. On 15.3.2021, the capital of the company was raised from ₹3.5 crores to ₹5 crores. The shareholding pattern of the company is as follows :-

S. No.	Shareholder	No. of Shares	% in total share
1	Vikar Aggarwal (Director)	19,20,000/-	38.40%
2	Deepika Aggarwal	4,25,000/-	8.50%
3	Pranav Garg (Director)	9,25,000/-	18.50%
4	Shally Garg	7,25,000/-	14.50%
5	Arman Aggarwal	1,55,000/-	3.10%
6	Ashwani Kumar	6,00,000/-	12.00%
7	Lovleen Garg	2,50,000/-	5.00%
	Total	50,00,000/-	100.00%

3. The complainant alleged that he lost his mother in April, 2021 and also his wife on 8.5.2021 who was holding 4,25,000 (8.5%) lacs shares in the company. On 27.5.2021, accused Ashwani Kumar and complainant's son Arman became Directors of the Company. Ashwani Kumar and his brother Satish Kumar, taking advantage of the situation and in connivance with other accused convened a meeting with the complainant in the factory premises of the company on 20.8.2021 and a settlement was arrived at between the parties wherein it was orally agreed that all the share of the complainant in M/s Swastik Automech Company would be transferred in favour of the accused for a consideration of ₹25 crores. It was further orally

agreed that the shares of M/s Swastik Arai Tubular Private Limited (in short hereinafter referred to as M/s Swastik Arai Company) which was held by the accused as well as by M/s Swastik Automech Company would be relinquished in favour of the complainant and his son for a consideration of ₹5,86,33,000/-, which would be paid to M/s Swastik Automech Company apart from an amount of ₹ 60 lacs to accused Ashwani Kumar. It is alleged that the complainant and his son accordingly paid an amount of ₹5,86,33,000/- to M/s Swastik Automech Company and an amount of ₹60 lacs to Ashwani Kumar during the period 23rd August, 2021 to 26th August, 2021 and thereafter all the eqipments and machinery of M/s Swastik Arai Company was shifted to plot No. 285, Sector 58, Faridabad. However, accused Ashwani Kumar did not transfer the shares held by the accused himself and in M/s Swastik Arai Company in favour of the complainant's son and although a complaint in this regard had been made to the police on 12.10.2021 but to no avail. It is also alleged that the accused paid only ₹2.5 crores (10% of the agreed amount of ₹ 25 crores) regarding transfer of 50% share of the complainant in M/s Swastik Automech Company and did not pay the remaining amount. It is alleged that although the complainant and his son had not transferred their shares in the company M/s Swastik Automech Company but transfer is shown to have been effected. It is also alleged that the accused had not even surrendered their shares in M/s Swastik Arai Company despite having received total consideration as had been agreed.

4. The learned counsel for the petitioners, while opening his arguments has submitted that the FIR in question has been lodged as a counter blast to the

FIR, which had been lodged at the instance of the accused against the complainant i.e. FIR No. 399 dated 12.11.2021 under Sections 406, 420 IPC, Police Station Gatdpuri, District Palwal. It has been submitted that although the complainant has tried to build up a case that it is a case where an agreement had been entered into amongst the parties for sale of 50% of share in M/s Swastik Automech Company by the complainant party to the accused for an amount of ₹ 25 crores whereas the accused is alleged to have paid only an amount of ₹2.5 crores but infact the said agreement was for a total payment of ₹ 2.5 crores only. The learned counsel has submitted that the complainant himself had admitted the said fact before various forums in various documents. In order to hammer forth his aforesaid submission, the learned counsel has referred to several documents annexed with the petition as well as his application.

5. On the other hand, the learned State counsel assisted by counsel for the complainant has submitted that admittedly that it was an oral agreement amongst the parties regarding sale of 50%of the share by the complainant in M/s Swastik Automech Company and that the accused are trying to exploit the said factum of their being oral agreement only by projecting the share value to be ₹10 per share only whereas the market value was much more which was about ₹100 per share and that the consideration for sale of 50% share in M/s Swastik Automech Company was ₹25 crores and not ₹ 2.5 crores. The learned counsel for the complainant has further submitted that infact it is a case of forgery wherein the complainant got the shares transferred by forging the signatures of his son Arman even before the 10%

of the consideration amount i.e. ₹2.5 crores had been transferred in the account of the complainant. The learned counsel for the complainant has further submitted that the valuation certificate, as obtained by the petitioner from one CA, cannot be relied upon since he was not the CA employed by the company or authorized by the company and it remains unexplained as to on what basis he had given the said valuation. It has further been that the manner in which the meeting of the Board of Directors is shown to have been conducted is absolutely against the prescribed rules and regulations and that the prescribed notice period has not even been afforded before conducting such meeting which clearly shows the conspiracy and connivance amongst all the accused so as to deprive the complainant and his son of their holding in the company.

6. I have considered rival submissions addressed before this Court.

7. First of all, this Court deems appropriate to consider the question as to whether it is a case where the sale consideration for transfer of 50% shares of the complainant in M/s Swastik Automech Company in favour of the accused was agreed as ₹25 crores or ₹2.5 crores. In this regard, a reference needs to be made to the relevant documents placed on record. A brief gist, as extracted from the relevant documents annexed with the petition and application, is stated hereinbelow :-

(i) A perusal of Annexure P-7, which is a valuation certificate issued by JPAAG & Associates in respect of the fair value of equity share of M/s Swastik Automech Company would show that the fair value of each equity share of the company had been stated as ₹

6.52 as on 31.3.2021. The total paid up capital in respect of the equity shares is stated to be ₹ 5 crores.

(ii) A perusal of copy of e-mail dated 10.9.2021 (Annexure P-23) from complainant Vikas Aggarwal to one Sunil Anand shows that the complainant Vikas Aggarwal has himself stated therein that he alongwith Jasvir had left M/s Swastik Automech Company and that the same is being looked after by Satish Kumar and Ashwani Kumar.

(iii) The petitioner Ashwani Kumar had submitted a complaint dated 24.9.2021 (Annexure P-9) to Economic Offences Wing. The matter was investigated by the Economic Offences Wing wherein the following findings were recorded in its report dated 22.2.2022 (Annexure P-10):-

> ".........The opposite party Vikas Aggarwal has sold the shares of Swastik Automech Private Limited Company to the complainant and received the cash amount in the bank accounts as per mutual settlement dated 20.8.2021 and shifted the machinery of Swastik Arai Tubular Private Limited Company by postal challan........."

(iv) The petitioner Ashwani Kumar had also lodged FIR No. 399 dated 12.11.2021 under Sections 406, 420 IPC, Police Station Gatdpuri, District Palwal against complainant Vikas Aggarwal. When the complainant Vikas Aggarwal has applied for grant of bail in respect of case registered against him i.e. FIR No. 399 dated 12.11.2021 under Sections 406, 420 IPC, Police Station Gatdpuri, District Palwal, this Court in CRM-M-54069-2021 while granting interim bail had directed the petitioner Vikas Aggarwal to furnish details of his assets held by him individually or jointly including bank balance, fixed deposits etc. to the investigator with a copy to the complainant (complainant in that case i.e. the present petitioner).

In complaince of the said direction, the complainant Vikas Aggarwal furnished documents which are part of Annexure P-31 and one of the certificates issued by Vikas Aggarwal as regards the value of share of M/s Swastik Automech Company reads as follows :-

> "This is to confirm that Mr. Vikas Aggarwal having PAN Number : AADPA2164Q, residing at House NO. 648, Sector 17, Faridabad 121001 has hold 2345000 shares @ ₹10 each as on 32st December, 2021 of the Swastik Automech Pvt Ltd which is 46.9% shares of the total share capital of the company."
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> (emphasis supplied)

8. The aforesaid documents, particularly the documents furnished by the complainant in response to order passed by this Court in CRM-M-54069-2021 while granting interim bail to complainant would show that the price of one equity share was admitted to be ₹ 10. Nothing has been shown to his Court which could point out that the value of each share is ₹100 so as to say that the consideration for sale of 50% share of the complainant in M/s Swastik Automech Company would be ten times the amount received by him i.e. 10 times of ₹2.5 crores.

9. Though, during the course of arguments, the learned counsel for the complainant vehemently argued that the signatures on form SH-4 (Annexure R-3) regarding transfer of shares are forged and that no transfer had ever taken place but the fact that this Court *prima facie* has found that the sale

consideration of 50% share was ₹2.5 crores and not ₹25 crores and receipt of ₹2.5 crores is not denied, the aforesaid argument of forgery would lose much of its steam inasmuch as it is not a case where a lesser amount than ₹2.5 crores had been paid and that despite payment of lesser amount, the shares had been transferred.

10. The learned counsel for the complainant also submitted that forgery would be evident from the fact that while the amount of ₹2.5 crores was credited in the bank account of the complainant on 31.8.2021, the SH-4 form regarding transfer is dated 26.8.2021 i.e. even before the receipt of payment by the complainant.

11. This Court does find that there is a difference of about 5 days in the credit of payment in complainant's account and the execution of form SH-4 but the same could be explained, as has been submitted by the learned counsel for the petitioner that the cheque in question had been handed over on 26.8.2021 itself and that the relations as in August, 2021 were not strained amongst the parties because of which they had even chosen not to have written agreement for transfer of shares.

12. During arguments, the learned counsel representing the complainant submitted that the FIR lodged by the petitioner against the complainant i.e. FIR No. 399 dated 12.11.2021 under Sections 406, 420 IPC, Police Station Gatdpuri, District Palwal, Haryana is infact a counter blast to the legal notice dated 29.9.2021 (Annexure R-12) served upon Ashwani Kumar and Satish Kumar wherein it had been mentioned that the sale consdieration was ₹ 25 crores, which was required to be paid to the complainant but the said

contention is not acceptable as FIR No. 399 dated 12.11.2021 was infact lodged pursuant to an application dated 24.9.2021 submitted by the petitioner against the present complainant which would rather show that the legal notice was a counter blast to the complaint submitted by the petitioner against the complainant.

13. Still further, a perusal of another e-mail dated 16.9.2021 (Annexure R-9) sent by complainant to accused would show that the amount of ₹ 25 crores is not mentioned therein though it is stated therein in vague terms and a partial payment had been received, and that the amount as agreed be paid. The contention of the complainant that the valuation certificate relied upon by the petitioner as Annexure P-7 has not been issued by regular CA and is a procured certificate will not hold ground as even in the valuation certificate annexed with E-mail (Annexure P-31) sent by complainant which he had sent pursuant to directions issued by this Court in CRM-M-54069-2021, the valuation has been assessed as ₹ 10/- per share. The learned State counsel or the learned counsel for the complainant could not produce any document to show that the value of the 50% share of M/s Swastik Automech Company was ₹25 crores and not ₹2.5 crores. It is not in dispute that the said amount of ₹2.5 crores already stands received by the complainant.

14. Even the amount in respect of the admitted 4,25,000 shares of Deepika Aggarwal (deceased wife of complainant) also stands credited in the account of complainant's son on 31.8.2021 i.e. an amount of ₹42,50,000/-, as would be evident from the accounts statement (Annexure R-3) annexed by the

complainant himself. The same also *prima facie* points out that value is ₹ 10 per share and not ₹ 100 per share, as alleged by the complainant.

15. As a sequel to aforesaid discussion, it is concluded that value of each share is ₹ 10 per share and not ₹ 100 per share, as suggested by complainant. Consequently, the value of 50% of shares which complainant and his family held i.e. 25,00,000 shares would be ₹ 2.5 crores, which admittedly has been received by complainant. The fact that complainant had, by way of an oral agreement, agreed to transfer his shares in favour of accused is not disputed. It is only the consideration which was being disputed. It is, thus, found that the petitioner and his co-accused have already paid the agreed consideration amount to the complainant. In any case, the case is mainly based on documentary evidence. The agreement is admittedly oral and payment of ₹2.5 crores is not disputed. The question regarding there being irregularity in procedure adopted for convening meetings of share-holders or in procedure adopted for effecting transfer is a matter which can well be decided in proceedings before NCLT, which are already pending. As such, while *prima facie* finding that the accused cannot be said to have cheated the complainant of any amount, the petitions merit acceptance and are hereby accepted.

16. It is ordered that the petitioners Pranav Garg, Satish Kumar and Ashwani Kumar in CRM-M-19116-2022 in the event of their arrest shall be released on bail subject to their furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with

the Arresting/Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

17. Since the petitioners in CRM-M-18384-2022 Shelly Garg and Lovleen Garg are stated to have joined investigation and are not required for any further investigation, the interim directions issued by this Court vide order dated 7.5.2022 are made absolute subject to the condition that the petitioners shall continue to appear before the Investigating Officer as and when called upon to do so and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

18. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

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

19.5.2022 **(Gurvinder Singh Gill)**
kamal **Judge**

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