

205

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

CRM-M-21270-2020 (O&M)

Date of decision: 21.04.2022

BHUPINDER SINGH @ RODA

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. H.S. Deol, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. P.S. Ahluwalia, Advocate
for complainant.

SURESHWAR THAKUR, J. (ORAL)**CRMs-25012, 28496, 30935-2020**

The instant applications have been filed seeking placing on record certain documents, as mentioned in the respective applications.

For good, and, valid reasons recorded in the applications, the same are allowed subject to all just exceptions.

Main case

1. The instant petition has been filed under Section 438 of Cr.P.C., wherein the present bail petitioner seeks indulgence of anticipatory bail.

2. The incriminatory role, as is assigned to the bail petitioner, is carried in FIR No.157 of 03.07.2020, registered at Police Station Civil Lines, Patiala, District Patiala, wherein offences constituted under Sections 406, 420 of IPC, 1860, are embodied.

3. The above FIR is lodged in the year 2020. The factum of lodging of an FIR in the year 2020, is of utmost importance, as the genesis of the prosecution case becomes rested, upon an agreement made by the petitioner, and, the respondent-complainant rather much earliler thereto in the year 2012. Through, the agreement of the year 2012, the petitioner herein, and, one Kamal Kumar, and, one, Murari Lal, all of whom were holding a joint transport business, rather sold the joint transport business along with the fleet of vehicles, for a sum of Rs.80 lacs, to 1. Jatinder Singh son of Harvinder Singh, resident of village Bahmana, Tehsil Samana, District Patiala, 2. Mahinder Singh son of Amarjeet Singh, resident of village Kherki, Tehsil and District Patiala, and, 3. Harjinder Singh son of Gurdev Singh, resident of village Nanasu, Tehsil and District Patiala. At the time of drawing of the agreement (supra), a sum of Rs. 40 lacs was received, as earnest money, by the sellers from the buyers, in the presence of witnesses concerned, and, also at the time of drawing of the agreement (supra), the possession of the fleet of buses owned jointly by the petitioner, and, one, Kamal Kumar, and, one, Murari Lal, became handed over to the above named purchasers. Moreover, it is also detailed therein, that upon transfer of the route permits taking place by 03.12.2020, the remaining sale consideration becoming liquidated. Moreover, it is also mentioned therein, that the sellers would be bound to get the above route permits transferred, from the names of the original owners, through theirs filing joint transfer applications duly supported by affidavit, by 03.12.2012, obviously in favour of the new owners. It is not contested amongst the contesting litigants, that save and except, no portion of the total sale consideration falling to the share of the aggrieved-complainant, becoming liquidated to them, whereas

it, became completely liquidated, at the relevant stage, by the purchasers to the buyers, and, also rather it becoming appropriated solitarily by the present bail petitioner, that the above joint application accompanied by affidavits of all concerned, rather becoming filed before the authority concerned, nor it is contested that the transferred route permits concerned, are stained with any blemish.

4. The learned State counsel as well as learned counsel appearing for the aggrieved-complainant vehemently oppose, the grant of concession of anticipatory bail, to the present bail petitioner, and, both submit that there is the completest lack of *bonafides* on the part of the present bail petitioner. The afore submission becomes grooved in the factum, of the present bail petitioner rather taking variant stands, respectively in the pleadings set up in the petition, with the ones as taken in the subsequent application bearing No. CRM-28496-2020. The purported variance is contended, to unfold lack of *bonafides*, and, is comprised in the factum, that though initially the present bail petitioner contended, that at the time of drawing of the apposite agreement, whereons, the aggrieved-complainant(s) do not contest theirs making their valid signatures, that the proportion of money falling to the share(s) of aggrieved-complainant(s) becoming liquidated to them, whereas, subsequently in the pleadings cast in CRM-30935-2020, and, in CRM-28496-2020, rather a contrary thereto stand, becoming propounded, inasmuch as, in the year 2013, certain agreements to sell being executed *inter-se* Kamal Kumar, a partner in the joint transport business, and, brother of complainant one, Murari Lal, with one Modi Ram, and, his spouse one Surinder Rani, and, that at the time of drawings of the agreement(s) to sell concerned, the sale consideration falling to the share of the aggrieved-

complainant, becoming liquidated to either Modi Ram or to his wife Surinder Rani. The above agreements to sell are respectively designated as Annexure P-5, and, P-6, and, are appended with CRM-30935-2020. At this stage, it is important to mention that one Modi Ram is stated to be no longer alive, and, obviously his statement could not be recorded by the investigating officer.

6. The afore made argument before this Court, by the learned State counsel as well as by the learned counsel for aggrieved-complainant, does become totally unhinged of its vigor. The reason for making the afore conclusion, arises from the factum, of the signatures as made on the apposite agreement(s) to sell, respectively by the aggrieved-complainant Murari Lal, and, by his brother one, Kamal Kumar, with whom the present bail petitioner was holding a joint transport business, rather becoming not contested by the concerned. Therefore, sanctity is to be assigned to them besides to the recitals therein. The above agreement to sell was drawn in the year 2012. The most imperative portion of the agreement to sell, is comprised in the factum, that though at the time of drawing of the agreement *inter-se* the concerned, relating to alienation of the transport business, a sum of Rs. 40 lacs being received, as earnest money, and, thereafters, upon joint applications with affidavit(s) being furnished before the RTO concerned, by all concerned, then the remaining sale consideration being agreed to be liquidated by the purchasers to the aggrieved-complainant, his brother Kamal Kumar, and, the present bail petitioner. A perusal of the transfer certificate issued by the Regional Transport Authority, and, which exists at page Nos. 22, to 27 of the paperbook, reveals that as a matter of fact, the route permits became transferred to the

buyers concerned from the sellers concerned, of the joint transport business. The afore would not have happened, without the requisite procedural compliances, being made, and, there is also no tangible evidence adduced on record, at this stage by the investigating officer concerned, that it happened without the applications concerned, being jointly signed by the partners concerned, and/or, that each of them not appending their respective affidavits therewith. Therefore, the conclusion which is to be drawn therefrom, is that, the present bail petitioner, and, the aggrieved-complainant, and, his brother Kamal Kumar were at *ad-idem* with respect to the sale of transport business from them to one, Sehaj Bus Service Patiala.

7. Be that as it may, and, if so, if initially in the pleadings set up in the petition, though there is an averment, that in contemporaneity to the drawing of the agreement concerned, between the present bail petitioner, and, his partners, who are the complainant, and, his brother Kamal Kumar, rather the completest liquidation being made by the petitioner, of the apposite share(s), in the sale consideration of one, Murari Lal, and, his brother Kamal Kumar rather to both of them. Moreover, though through the agreement to sell appended with CRM-30935-2020, and, also with CRM-28496-2020, wherein, in one of them, the beneficiary is one Kamal Kumar an apposite partner and, brother of Murari Lal, and, he is also a witness in another, rather a contrary thereto stand, is propagated inasmuch, as, through agreements to sell, respectively of the year 2013, and, of 2015, entered into by vendees thereof with one Modi Ram, and/or his wife, photocopies whereof in vernacular, become placed on record, rather the apposite monetary recompenses taking place, yet for the reasons hereafter, the afore variant stands do not make emergences of any lack of *bonafides*.

8. Therefore, also it becomes imperative for this Court, to assess the *prima-facie* exculpatory vigor of the photocopies of agreements to sell, as, are scribed in vernacular. The necessity of making the afore determination, arises from the factum, that if as a matter of fact, the agreement(s) to sell did come to be executed rather in the year 2013, and/or in 2015, whereas, the agreement of selling the transport business occurred much prior thereto rather in the year 2012, whether, when also there is no denial of executions of the agreements to sell, at the instance of the concerned, and, also when there is also a reference therein, that the time of their respective drawings, hence the sale consideration mentioned therein, passing from the vendees to the vendor, and, with the signatures either of one Murari Lal or of Kamal Kumar, either as vendees or as witnesses thereto, occurring thereons, whether hence the effect of the afore variant pleadings becomes paled, and/or, whether as a matter of fact, there was an utmost genuine *bonafide* attempt on the part of the present bail petitioner, to through the execution of the agreements to sell, make a genuine endeavour to liquidate, to the aggrieved-complainant, and, his brother one, Kamal Kumar, their respective shares in the sale consideration, as became allegedly exclusively received by the present bail petitioner, at the time of the selling of transport business concerned. In the above endeavour, this Court has seen the photocopies of the agreements to sell, which are in vernacular, and, the learned counsel for the present bail petitioner, and, aggrieved-complainant, do not, at this stage contest the factum of makings of the afore agreements to sell. Therefore, when in the agreements to sell concerned, appended as Annexure P-5 to CRM-30935-2020, there are recital(s), that the present bail petitioner, and, Kamal Kumar, who is the brother of one, Murari Lal, who

also holds a share in the erstwhile joint transport business, and, which was subsequently sold, rather being the vendee in the apposite agreement, hence along with the present bail petitioner, and, that a sum of Rs. 30 lacs, as sale consideration being liquidated to one, Modi Ram, and, to one, Surinder Rani, besides when the witness thereto is aggrieved-complainant Murari Lal.

9. In addition when likewise in Annexure P-6, the uncontested signatures of Kamal Kumar, a partner with the present bail petitioner, in the joint transport business, occurs as witness, though, therein the present bail petitioner is the vendee.

10. Nonetheless, the effect of the above is that one, Murari Lal, who has signed as witness to Annexure P-5, wherein his brother one, Kamal Kumar a partner in the joint transport business, is the vendee, rather openly manifesting the factum, as contended by the learned counsel for the petitioner, that yet through Annexure P-5, even if assumingly, at the time of drawing of the agreement for sale of transport business there was no liquidation of the share of the agreement in the joint transport business, that, yet the afore being an utmost *bonafide*, and, genuine attempt of the petitioner to monetarily recompense, through Annexure P-5, one Kamal Kumar, and, one Murari Lal. Moreover, if Murari Lal had at the time of drawing of Annexure P-5, in the year 2013, reared any grievance, that his share in the sale consideration in the joint transport business, was not liquidated to him, rather at the time of its sale, thereupon, he would not have made thereons his signatures, even as a witness, rather would have made a protest to its execution, moreso, when his brother also partner with him in the joint transport business one, Kamal Kumar was a joint vendee thereof.

The effect of his not making a protest at the time of drawing of the agreement (Annexure P-5) in the year 2013, besides also with his brother one, Kamal Kumar acquiescing hence as a witness to the agreement of purchase drawn qua Bhupinder Singh by Surinder Rani, through Annexure P-6, speaks loud volumes about the brother of Murari Lal also emphatically acquiescing to the factum, that even in the year 2015, he did not rear any grievance with respect to even his share in the sale consideration concerned, being not ever liquidated to him.

11. Therefore, the effect of variant stands, if any, become completely subsumed, and, nor on anvil of the purported variant stands, as propagated, at various stages by the present bail petition, no inference can be drawn, that the present petitioner is lacking in *bonafides*, and, is mis-constituted, and, that it requires dismissal.

12. The further effect, of no prompt protests being made to the execution(s) of agreements to sell concerned, either exclusively in favour of the present bail petitioner, and/or, along with the brother of one, Murari Lal, namely Kamal Kumar, who was also holding a joint share in the erstwhile transport business rather with the one Murari Lal, is that, obviously an immense period of time has elapsed respectively from the year 2013, and, from the year 2015, upto obviously the year 2020 when the instant FIR came to be lodged. Therefore, the afore procrastinated delay *prima-facie* boosts an inference from this Court, especially given the afore acquiescences, of aggrieved concerned qua payments being made to them by the bail petitioner, that *prima-facie* hence a taint ridden FIR for hence attempting to pre-textually implicate the petitioner, rather becoming lodged.

13. Therefore, there is merit in the present bail petition, and, is

allowed. The present bail petitioner is ordered to be admitted to anticipatory bail, subject to his furnishing personal and surety bonds in the sum of Rs.1 lacs each, to the satisfaction of the arresting officer. Moreover, also subject to his undertaking before the investigating officer concerned, that he shall not tamper with prosecution evidence nor shall influence the prosecution witnesses, and, shall continue to render his co-operation to the investigating officer concerned, as and when his co-operation is solicited through a written *hukamnama*, being served upon him.

14. The afore made observations are only for the disposal of the present bail petition, and, shall have no bearing, upon the merits of the case.

15. Pending miscellaneous application(s), if any, stand(s), disposed of.

21.04.2022

Ithlesh

**(SURESHWAR THAKUR)
JUDGE**

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No