

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

1. CRM-M No.35421 of 2022
Date of Reserve: 26.08.2022
Date of Decision: 05.09.2022

Raj KumariPetitioner
Vs
State of HaryanaRespondent

2. CRM-M No.35626 of 2022

Tarun KhuranaPetitioner
Vs
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Bains, Senior Advocate with
Mr. Abhinav Gupta, Advocate
for the petitioner(s).

Mr. Deepak Sabharwal, Addl. A.G., Haryana.

Mr. R.S. Rai, Senior Advocate with
Ms. Eknor Kaur Sara, Advocate
for the complainant.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CRM-M No.35421 and 35626 of 2022 are being decided. Since both the petitions have arisen from the common FIR, therefore, for brevity facts are being culled out from CRM-M No.35421 of 2022.

[2]. Petitioner(s) seek grant of anticipatory bail in case bearing FIR No.364 dated 16.07.2022, registered under

Sections 406 & 420 IPC at P.S. City Thanesar, District Kurukshetra.

[3]. FIR came to be registered on the basis of complaint made by one Sahil Sudha son of Subhash Sudha wherein it has been alleged that the complainant had entered into an agreement to sell with Om Parkash Khurana and Raj Khurana in respect of 153 *Kanals* 16 *Marlas* of land and paid Rs.1.50 crores through different bank drafts as earnest money. It was agreed between the parties that the sale deed will be executed after the decision of the liquidation case in the High Court.

[4]. The complainant has also alleged that Om Parkash Khurana and Raj Khurana did not execute the sale deed. Raj Khurana died in the year 2016 and his son and daughter-in-law became new Directors of the Company. It has also been alleged that on 21.06.2022, the petitioner(s) with the consent of the complainant entered into additional agreement, wherein it was agreed that the sale deed will be executed within 2-3 days. On 22.06.2022, one additional agreement was also executed with Om Parkash Khurana wherein it was agreed that the sale deed will be executed within 2-3 days. On being asked, Om Parkash Khurana threatened the complainant to involve him in a false case and also threatened to suicide by naming the complainant and his family.

[5]. The complainant further alleged that on making enquiry, he came to know that out of the aforesaid land, Om Parkash Khurana, Raj Kumari Khurana, Tarun Khurana, Satyapal Khetarpal and Saroj Khetarpal in connivance with each other have leased out the land measuring 58 Kanals 15 Marlas for 9 years in favour of Satyapal Khetarpal on 14.12.2021 and further sold the land measuring 29 Kanal 1 Marla to Satyapal Khetarpal and Saroj Khetarpal on 07.02.2022 in the name of M/s H.S. Food. By citing the aforesaid instances, the complainant has alleged that he has been cheated for an amount of Rs.1.50 crores.

[6]. Learned Senior counsel for the petitioner(s) submitted that husband of the petitioner-Raj Kumari and Om Parkash Khurana founded the company under the name and style of M/s Sunfin Oil Mills Ltd. in the year 1991 which was registered under the Companies Act. Husband of the petitioner-Raj Kumari and Om Parkash Khurana were the founding Directors of the Company. The Company went into losses and went into liquidation as it could not pay the secured/unsecured loans. Consequently, the Board of Directors was suspended. Husband of the petitioner-Raj Kumari and Om Parkash Khurana entered into an agreement to sell on 05.02.2011 for the land measuring 153 Kanals 16 Marlas at the rate of Rs.27 lakhs per acre i.e. for

a total consideration of Rs.5,19,07,500/- with Subhash Sudha (father of the complainant). Father of the complainant is currently Member of Legislative Assembly from Kurukshetra and belongs to the ruling party. Sale deed was executed in the name of Sahil Sudha on 05.08.2011. Earnest money to the tune of Rs.1.50 crores was paid vide different drafts. The sale deed was to be executed subject to the revival of the Company and coming out of the Company from liquidation proceedings. In case of non-execution of the sale deed, purchaser would have the right to get the refund or to get the agreement to sell executed through the Civil Court. Husband of the petitioner-Raj Kumari expired on 26.12.2016. Son of the petitioner became director of the Company on 27.07.2020. No civil suit was filed during life time of husband of the petitioner for the execution of sale deed or refund of the amount. Limitation for filing a civil suit has expired in the year 2014. In the year, 2019 the Company came out of the liquidation proceedings. On 03.05.2019, the liquidation proceedings ultimately had culminated and the Company was restored on 21.06.2019.

[7]. Learned Senior counsel for the petitioner(s) further submitted that the additional agreement to sell dated 22.06.2022 is the result of an undue influence. Om Parkash Khurana filed a civil suit challenging the additional agreement to

sell dated 22.06.2022. The civil suit was ultimately got dismissed as withdrawn on 19.07.2022. In the additional agreement to sell, no target date was mentioned.

[8]. Learned Senior counsel by relying upon Section 41-A Cr.P.C. submitted that the police officer shall in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41 Cr.P.C., issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice. Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice. Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for the reasons to be recorded, the police officer is of the opinion that he ought to be arrested. Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

[9]. Learned Senior counsel for the petitioner(s) also by

referring to **Arnesh Kumar vs. State of Bihar & Anr. 2014(3) R.C.R. (Criminal) 527** further submitted that where the arrest of the person is not required under Section 41(1) Cr.P.C., then the police officer should not arrest the accused unnecessarily and the Magistrate is not supposed to authorise the detention in a casual and mechanical manner. Number of directions were issued in the aforesaid case to be meticulously followed by the police officer.

[10]. Learned Senior counsel also by relying upon **Dilip Singh vs. State of Madhya Pradesh and another, 2021(1) R.C.R. (Criminal) 585** further submitted that the criminal Court exercising jurisdiction to grant bail/anticipatory bail, not expected to act as recovery agent to realise dues of complainant without there being any trial. Direction to deposit the amount would be onerous enough to be rejected. By referring to **Manoj Kumar Sood and Anr. vs. State of Jharkhand, Special Leave to Appeal (Crl.) No.1274 of 2021** decided on 19.03.2021, learned Senior counsel submitted that the disputed dues cannot be recovered in the criminal proceedings. It would be open to the Court to grant or refuse prayer for bail depending on facts and circumstances of the case, but in any case jurisdiction of the criminal Court cannot be invoked for the realisation of dues of the complainant without a

trial.

[11]. Learned Senior counsel for the petitioner(s) also by relying upon **Dr. Rini Johar & Anr. vs. State of M.P. & Ors., 2016(3) R.C.R. (Criminal) 300** submitted that dignity and liberty are having cherished value. Individual liberty cannot be curtailed in an unlawful manner as the same would create anguish in the mind of the victim and would emotionally torn away the personality of the person. Under Section 41 and 41-A Cr.P.C., the person committing an offence punishable with offence less than 7 years, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence. The police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence, or for proper investigation of the case, or to prevent the accused from causing the evidence of the offence to disappear or tampering with such evidenced in any manner. In the aforesaid case, ratio of **Arnesh Kumar's** case (supra) was relied.

[12]. Per contra, learned State counsel duly assisted by learned Senior counsel for the complainant submitted that in pursuance of email dated 20.06.2022 disclosing the factum of sale deed dated 07.02.2022, the additional agreement to sell came to be executed by the accused on 21.06.2022 and

22.06.2022. The execution of additional agreement to sell was the result of the aforesaid disclosure of allegations in which instead of honouring the commitment, the complainant party was involved in parting with the title of the land in dispute by way of different sales. The authority of Om Parkash Khurana was also withdrawn after June 2022.

[13]. Learned State counsel also relied upon the snap shots of the notice issued to the petitioner under Section 41-A Cr.P.C. on 26.07.2022, 28.07.2022, 29.07.2022, 31.07.2022 and 02.08.2022 and thereafter owing to the inaction on behalf of the petitioner(s), arrest warrants in terms of Section 41-A(4) have been obtained from the Chief Judicial Magistrate, Kurukshetra for 15.10.2022. By referring to the aforesaid, learned State counsel further submitted that the stage of Section 41-A Cr.P.C. is over and issuance of warrants under Section 41-A(4) has been legally invoked.

[14]. At the time of issuance of notice of motion on 10.08.2022, following order was passed by the Co-ordinate Bench of this Court:-

“It is submitted that the dispute in question is primarily a civil dispute, whereas a criminal flavor is sought to be given thereto. Agreement to sell was executed in the year 2011 by the complainant with M/s Sunfin Oil Mills Limited of whom Om Parkash Khurana

and Raj Khurana, were the directors. Raj Khurana who died on 26.12.2016 is the husband of the petitioner-Raj Kumari and father of petitioner-Tarun Khurana. Present petitioners become directors of the company namely M/s Sunfin Oil Mills Limited, thereafter. Certain documents, it is submitted were got signed by petitioner Tarun Khurana on 21.06.2022 under duress.

Notice of motion.

Mr. Deepak Sabharwal, Addl.AG., Haryana, accepts notice on behalf of the respondent-State.

Ms. Eknoor Kaur Sara, Advocate, appears on behalf of the complainant, at this stage.

Adjourned to 17.08.2022.

Status report be filed before the adjourned date.

Photocopy of this order be placed on the file of connected case mentioned above.

**(LISA GILL)
JUDGE**

August 10, 2022.
s.khan"

[15]. Having heard learned counsel for the parties, I find that notice of appearance before the police officer under Section 41-A Cr.P.C. is applicable where the arrest of a person is not required under the provisions of sub-section (1) of section 41 Cr.P.C. Admittedly, notices under Section 41-A Cr.P.C. have been issued to the petitioners. The legal position as culled out in **Arnesh Kumar's** case (supra) has to be followed. After issuance of notice, under Section 41-A Cr.P.C., the police officer in case of compliance by the accused cannot arrest the

person in respect of offences referred to in the notice unless for the reasons to be recorded, the police officer is of the opinion that the arrest of the person is necessary. In any case, the guidelines/directions issued in Arnesh Kumar's case (supra) have to be complied with by the police.

[16]. The execution of additional agreement to sell dated 21.06.2022 and the interpretation attached to the email dated 22.06.2022 would remain debatable. The allegations are based on documentary evidence. At this stage, without forming any opinion on the merits of both the cases, it would be appropriate to direct both the petitioners to appear before the Investigation Officer to join investigation.

[17]. Accordingly, both the petitions are allowed. Petitioners are directed to appear before the SHO/Investigating Officer to join investigation on 12.09.2022 at 11.00 A.M., and in the event of their arrest, they shall be released on anticipatory bail on their furnishing adequate bail bonds/surety bonds to the satisfaction of SHO/Investigating Agency subject to the following conditions as envisaged under Section 438(2) Cr.P.C:-

- i) that the petitioners shall make themselves available for interrogation before the Investigating Officer as and when required;
- ii) that the petitioners 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/her from disclosing such facts to the Court or to any police officer;

iii) that the petitioners shall not leave the country, without prior permission of the Court and shall surrender his/her passport, if any.

September 05, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No