

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-31288-2019 (O&M)

Reserved on: 22.9.2022

Pronounced on: 30.9.2022

Sumit Kathuria

... Petitioner

Versus

State of Punjab

... Respondents

CORAM:-HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Rubal Garg, Advocate
for the petitioner

Mr. G.S. Sandhu, Deputy Advocate General, Punjab.

Mr. Sunil Chadha, Senior Advocate with
Mr. Akshay Chadha, Advocate and
Mr. Kiranpreet Singh Sidhu, Advocate
for the complainant

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ASHOK KUMAR VERMA, J.

1. This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.103 dated 23.5.2019 under Section 420, 120-B of the IPC and Sections 467, 468, 471 of the IPC added later on, registered at Police Station Civil Lines, Amritsar.

2. Brief facts, as culled out from the paper book as also from the short reply filed by the State in petition being CRM-M-5615-2020 filed by the complainant, are that the petitioner is son of Harish Kathuria and Yash Kumari. Harish Kathuria and Yash Kumari being the Directors of the Harsha Builtcom Private Limited executed an agreement to sell dated 30.05.2018 in favour of the M/s E.M.C. Super

Speciality Hospitals Pvt. Ltd through its Managing Director, Pawan Arora and Director Smt. Meenu. Managing Director Pawan Kumar is the complainant in the present FIR, with respect to their land measuring 22738.76 square yards for a total consideration of Rs.20,01,01,000/- (rupees twenty crores one lac and one thousand only) and received an amount of rupees five crores on 30.5.2018 from the complainant, as earnest money and the date for execution of the sale deed was fixed on 30.1.2019. In the meantime, the complainant verified about the aforesaid land and came to know that the accused-seller own only 17162.86 square yards of land. The complainant again approached the petitioner who assured the complainant that he would get the necessary correction made in the revenue record and accused-seller received further amount of rupees two crores on 23.7.2018 and 24.7.2018 from the complainant. It is the case of the complainant that the petitioner alongwith his parents- Harish Kathuria and Yash Kumari have cheated and played fraud upon him as the ownership of Harsha Builtcom Pvt. Ltd. has been found to be not in consonance with the revenue record which is apparent from the *Fard Jamabandi* issued by the Patwari on 30.10.2018 that the accused-seller own only land measuring 17162.86 square yards whereas in the agreement to sell dated 30.05.2018, the accused-seller have recorded land measuring 22738.76 square yards.

3. It is the case of the petitioner that initially an amount of rupees five crores was received and an amount of rupees two crores was agreed to be paid by the complainant to the accused on or before 26.07.2018 but there was default in payment of sale consideration by the complainant.

4. I have heard learned counsel for the parties and gone through the paper-book.

5. Learned senior counsel for the petitioner has vehemently submitted that the petitioner has nothing to do with the agreement to sell as he is neither a signatory to the same nor has received any amount in terms of the agreement. Even the petitioner is not the Director of the seller company. He is sought to be implicated because he is son of Harish Kathuria and Yash Kumari, being the Directors of seller-company i.e. Harsha Builtcom Private Limited who executed agreement to sell.

Learned Sr. counsel next submitted that the complainant has filed a civil suit dated 2.3.2019 for possession by way of specific performance of agreement to sell dated 30.05.2018. No offence for cheating under Section 420 of the IPC is disclosed and contended that every breach of contract would not give rise to the offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. Learned Sr. counsel has also argued that the present is a case of civil nature and the complainant has wrongly given criminal colour to the civil dispute.

Learned Sr. counsel for the petitioner has lastly argued that the petitioner was arrested by the police on 1.6.2019 and sent to judicial custody. Investigation qua the petitioner is complete and challan qua him has already been presented before the trial court and even this Court has already granted him the benefit of interim regular bail vide its order dated 22.8.2019 and no useful purpose would be served by keeping the petitioner behind the bars.

6. *Per contra*, learned counsel for the State assisted by Mr.Chadha, learned Sr. Counsel for the complainant have opposed the grant of bail to the petitioner. Learned counsel submitted that the present FIR has been registered after conducting a detailed enquiry by the Additional Deputy Commissioner of Police City-1, Amritsar. On the basis of that enquiry, it revealed that the petitioner alongwith his parents-Harish Kathuria and Yash Kumari have committed fraud upon the complainant in connivance with each other. They have cheated the complainant by enticing him to enter into the above said agreement to sell in their favour whereas the accused persons are not the owner of the whole land agreed to be sold. During the course of investigation, offences under Sections 467, 468, 471 of the IPC were added vide DDR No.33 dated 30.5.2019 as the copy of *Fard Jamabandi* of the land in question issued on 25.7.2018 under the signatures of Tarlochan Singh, Circle Patwari, sent through e-mail of the petitioner to the email of the complainant was found to be forged and not issued by the above said Patwari and the petitioner also used to make correspondence with regard to all the transactions in question from his E-mail ID to the email ID of the complainant which shows his full complicity with his parents- Harish Kathuria and Yash Kumari. The petitioner was arrested on 1.6.2019. The laptop and mobile phone used in the commission of crime by him were recovered from his house which have been sent to State Cyber Crime Cell for retrieval of data. On the basis of disclosure statement made by the petitioner, Narinder Kumar, Bikram Singh Gill, who had prepared the forged *fard jamabandi* and Kapil Bhardwaj, employee of the seller company were also arrayed as co-accused in the present case on 19.6.2019. Final

Challan under Section 173 of the Cr.P.C. qua the petitioner has also been presented before the Illaqa Magistrate on 29.7.2019 and the charges have been framed by the trial court on 28.2.2020 against petitioner under Sections 420, 467, 468, 471 read with Section 120-B of the IPC. Learned counsel also submitted that the petitioner's intention is only to usurp hefty amount of the complainant under the garb of the aforesaid deal which is also apparent from the conduct of the petitioner before this Court that the Petitioner has been granted interim regular bail only on the ground that the petitioner wanted to settle the matter amicably, but after getting the interim relief, the petitioner alongwith his parents backed out from performance of their part.

Learned counsel lastly submitted that from the very inception, deception is manifest from the antecedents of the petitioner since two more FIRs are registered against petitioner and his father Harish Kathuria. FIR No.197 dated 13.11.2020 has been registered under Sections 406, 420 and 120-B of the IPC against his father Harish Kathuria with Police Station Economic Offences Wing, Delhi and FIR No.478 dated 23.2.2019 has been registered under Sections 147, 307, 504, 506 and 427 of the IPC against the petitioner and his father Harish Kathuria with Police Station Indrapuram, Gaziabad and the petitioner and his parents- Harish Kathuria and Yash Kumari are hands in glove with each other in committing fraud upon the complainant.

7. Having heard learned counsel for the parties and on carefully perusing the material available on record, I am of the view that that *prima facie*, from the very inception, the complainant appears

to have been enticed by the petitioner alongwith his parents-Harish Kathuria and Yash Kumari to enter into an agreement to sell in respect of land measuring 22738.76 square yards for a total consideration of Rs.200101000/- (rupees twenty crores one lac and one thousand only) and received an amount of rupees five crores on 30.5.2018 from the complainant, as earnest money and the date for execution of the sale deed was fixed on 30.1.2019 and on verification, the complainant came to know that the accused-seller own only 17162.86 square yards of land. The complainant again approached the petitioner who assured the complainant that he would get the necessary correction made in the revenue record and the accused-seller again received further amount of rupees two crores on 23.7.2018 and 24.7.2018 from the complainant. In this way, the petitioner alongwith his parents have cheated and played fraud upon the complainant as the ownership over the land in question by Harsha Builtcom Pvt. Ltd. has been found to be not in consonance with the revenue record which is apparent from the *Fard Jamabandi* issued by the Patwari on 30.10.2018 that the accused-seller own land measuring 17162.86 square yards only whereas in the agreement to sell dated 30.05.2018, accused-seller have recorded land measuring 22738.76 square yards.

8. Moreover, the present FIR has been registered after conducting a detailed enquiry by the Additional Deputy Commissioner of Police City-1, Amritsar. On the basis of that enquiry, it was revealed that the petitioner alongwith his parents in connivance with each other have committed fraud upon the complainant and they have cheated the complainant by enticing him to enter into the above said agreement to sell in his favour, whereas the accused-seller is not the owner of the

whole land agreed to be sold. During the course of investigation, offences under Sections 467, 468, 471 of the IPC were added vide DDR No.33 dated 30.5.2019 as the copy of *Fard Jamabandi* of the land in question issued on 25.7.2018 under the signatures of Tarlochan Singh, Circle Patwari, sent through e-mail to the complainant by the petitioner himself was found to be forged and not issued by the above said Patwari and the petitioner also used to send all the details qua the transactions in question from his E-mail ID to the email ID of the complainant which shows his full complicity with each other. Even in one of the emails sent by the petitioner, the map of the said land in question was shown to be 20191 square yards. However, even out of the said 20191 square yards, area measuring 393 square yards is not in the ownership of the seller-Company. It has also been revealed that on the basis of disclosure statement made by the petitioner, Narinder Kumar, Bikram Singh Gill, who had prepared the forged *fard jamabandi* and Kapil Bhardwaj, employee of the seller-company were also arrayed as co-accused in the present case on 19.6.2019. Even charges have been framed by the trial court on 28.2.2020 against petitioner under Sections 420, 467, 468, 471 read with Section 120-B of the IPC.

9. It will not be out of place to notice here that during the pendency of this petition, the petitioner was granted interim regular bail vide order dated 22.8.2019 passed by this Court which reads as under:-

“The petitioner is seeking regular bail in FIR No.103 dated 23.05.2019, under Sections 420, 467, 468 and 471 IPC, registered at Police Station Civil Lines, Amritsar. Learned counsel for the petitioner contends that the

allegations against the petitioner in the FIR manifest a civil dispute between the parties over sale and purchase of property. Parents of the petitioner are Directors of the Company namely Harsha Builtcom Pvt. Ltd. which had entered into an agreement to sell with the complainant Company for a total land of 22738.76 square yards. He also contends that it is alleged by the complainant that the Company does not own about 2000 square yards of the land. However, the company is ready to enter into the agreement with regard to the land which is admittedly owned by the Company and the sale consideration can be proportionately reduced. The petitioner is also ready to return the amount, which the Company had received, with interest at the rate of 6% per annum within a period of six months from now in the event of the complainant expressing unwillingness to execute the sale deed on the original terms and conditions. The petitioner shall pay a sum of Rs.50 lacs to the complainant on the next date of hearing.

Learned counsel for the complainant upon instructions from the complainant, who is present in Court, states that the complainant is also willing to settle the matter with the petitioner on the terms suggested by the counsel for the petitioner but the petitioner should be directed to deposit his passport.

Adjourned to 30.08.2019.

The petitioner shall be released on interim bail subject to his furnishing bail bonds to the satisfaction of the trial Court/Duty Magistrate concerned. The petitioner shall deposit his passport before the trial Court/Duty Magistrate.”

From the aforesaid statement made by the counsel for the petitioner, it is manifest that the petitioner got interim bail on the ground that the matter will be amicably settled between the parties.

Thereafter, vide order dated 30.8.2019 passed in this case, it appears that the petitioner has handed over two drafts for total amount of rupees fifty lacs in favour of the complainant in terms of the previous order passed by this Court on 22.8.2019 granting interim regular bail to him.

10. In CRM-M-36011-2019 filed by petitioner's parents- Harish Kathuria and Yash Kumari for grant of anticipatory bail, at the time of issuance of notice of motion, they have been granted *ad interim* anticipatory bail vide order dated 30.8.2019 passed by this Court on the ground that they are ready to settle the matter amicably.

11. Thereafter on getting interim regular bail by the petitioner and *ad interim* anticipatory bail by his parents, the matters were adjourned several times for complying with the terms of settlement. Ultimately the matters came for hearing on 29.3.2022 when the counsel for the petitioner produced a demand draft dated 28.3.2022 of rupees twenty lacs in favour of the complainant-Company and submitted that another twenty lacs will be paid on 25th April, 2022. Learned counsel for the complainant accepted the draft subject to reserving his rights. The parties were directed to appear before the Mediator, Mediation and Conciliation Centre of this Court on 25.4.2022 for arriving at an amicable settlement and the petitioner was directed to hand over draft of rupees twenty lacs to complainant before the Mediator on the next date fixed for mediation. The complainant and petitioner's father- Harish Kathuria appeared before the Mediator on 25.4.2022 and sought more time to bring demand draft of rupees twenty lacs as per the aforesaid order passed by this Court. Thereafter, the Mediator adjourned the matter for 4.5.2022. On that date also,

petitioner's father Harish Kathuria sought more time to bring the draft of rupees twenty lacs. The Mediator adjourned the matter to 9.5.2022. On that date also petitioner's father Harish Kathuria did not bring the said draft. Consequently, the matters were returned back as unsettled by the Mediator to this Court for decision on merits.

12. It is to be further noticed that even the complainant had filed the civil suit for possession by way of specific performance in respect of the said agreement to sell against the petitioner and his parents which was later on withdrawn by the complainant in terms of the settlement. However, when the mediation failed, then the complainant has moved an application for revival of his suit before the civil court.

13. The mere enjoyment of interim benefit granted by this Court does not in any manner lessen the gravity of offence and allegations which need to be considered *prima facie* on merits. It may perhaps send a wrong message in case regular bail is granted to petitioner. The conduct of the petitioner is writ large in the matter. Mere fact that interim regular bail has been granted to petitioner on handing over rupees fifty lacs and twenty lacs to the complainant does not lead to an inference that the interim regular bail granted by this Court is bound to be confirmed since the deposit of the amount simply enabled the petitioner to explore the possibility of settlement which has failed before the Mediator because of the aforesaid conduct of the petitioner who failed to appear before the mediator and the petitioner failed to comply with the order of this Court dated 29.3.2022 whereby the petitioner and his parents were directed to hand over a draft of rupees twenty lacs to the complainant on the date fixed for Mediation but

even adjourning the matter several times by the Mediator on the request of petitioner's father- Harish Kathuria, the draft of rupees twenty lacs was not handed over to the complainant and the matter remained unsettled.

14. From the above, it is apparent that even after taking hefty amount as earnest money against the land in question from the complainant, the petitioner and his parents have backed out not only from the terms of the agreement to sell but also from their statements made before this Court and the Mediator. Such type of act and conduct is required to be viewed with all seriousness. As noticed above, petitioner's and his father's antecedents are not good. Even two more FIRs have been registered against them.

15. It is well settled that mere filing of the civil suit by the complainant does not debar initiation of criminal proceedings, separately where cognizable offence is made out. This view of mine finds support from the judgment of Hon'ble Supreme Court in **Parmod Kumar @ Parbodh Kumar vs. State of Punjab (SC)**, Law Find Doc. Id # 1979372.

16. Needless to say, such type of cheating is rampant in our society and is often adopted by fraudsters, property grabbers and unscrupulous persons by usurping hard earned money of innocent people. This has become a cakewalk to amass wealth illegally overnight which needs to be curbed to save the innocent people with an iron hand.

17. Moreover, it has been observed by the Hon'ble Supreme Court in case **Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P, (1978) 1 SCC 240** that deprivation of freedom by

refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

18. Keeping in view the overall facts and circumstances of the present case, the chain of events in commission of offences as depicted in the prosecution story and having regard to the seriousness of the allegations of enticing, fraud and cheating and *prima facie* involvement of the petitioner in the commission of offence in connivance with each other and coupled with the antecedents of the petitioner and his co-accused against whom two more FIRs have been registered, I do not deem it a fit case for grant of concession of regular bail to the petitioner.

19. In view of the above, the present petition being devoid of any merit is hereby dismissed and the order dated 22.8.2019 releasing the petitioner on interim bail by this court stands vacated. The petitioner is directed to surrender before the trial court within two weeks from today. Misc. Application(s), if any, pending in this petition shall stand disposed of accordingly.

20. Nothing said herein above shall tantamount to expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

30.9.2022

MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes