

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-36011-2019 (O&M)

Reserved on:22.9.2022

Pronounced on: 30.9.2022

Harish Kathuria and Smt. Yash Kumari

... Petitioners

Versus

State of Punjab and another

...Respondents

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

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

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

...

ASHOK KUMAR VERMA,J.

1. This petition has been filed under Section 438 of the Cr.P.C. for grant of anticipatory bail to the petitioners 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 petitioners 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 Kumar and

Director Smt. Meenu. Managing Director. Pawan Kumar is the complainant in the present FIR and, with respect to their land measuring 22738.76 square yards for a total consideration of Rs.20,01,01,000/- (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 petitioners alongwith his son-Sumit Kathuria who assured the complainant that they 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 petitioners alongwith their son Sumit Kathuria have cheated and played fraud upon him 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 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 petitioners 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 petitioners has vehemently submitted that 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 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. Even 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 and petitioners-Harish Kathuria and Yash Kumari, being the Directors of seller-company i.e. Harsha Builtcom Private Limited, who have executed agreement to sell have been falsely implicated in the present case. Nothing is to be recovered from them.

Learned counsel for the petitioners next submitted that the petitioners are old aged persons and are senior citizens. They have already been granted the benefit of *ad-interim* anticipatory bail vide order dated 30.8.2019 passed by this Court and they have even joined the investigation and supplementary challan qua them has already been presented.

6. *Per contra*, learned counsel for the State assisted by Mr.Chadha, learned Sr. Counsel for the complainant have opposed the grant of anticipatory bail to the petitioners. Learned counsel submitted

that the petitioners are the main accused, being the Directors of the seller Company, and thus they are the actual beneficiary of the entire transactions of rupees seven crores received from the complainant. They are also the signatories to the agreement to sell being the Directors of the seller-Company. 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 petitioners alongwith their son-Sumit Kathuria 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 petitioners' son- Sumit Kathuria to the email of the complainant was found to be forged and not issued by the above said Patwari and the petitioners' son- Sumit Kathuria 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 i.e. the petitioners. Petitioners' son Sumit Kathuria 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 petitioners' son Sumit Kathuria, 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.

Learned counsel also submitted that the petitioners' 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 petitioners before this Court that the Petitioners have been granted interim anticipatory bail only on the ground that the petitioners wanted to settle the matter amicably, but after getting the interim relief, the petitioners alongwith their son-Sumit Kathuria backed out from the performance of their part.

Learned counsel lastly submitted that from the very inception, deception is manifest from the antecedents of the petitioners since two more FIRs are registered against petitioner-Harish Kathuria and his son-Sumit Kathuria. FIR No.197 dated 13.11.2020 has been registered under Sections 406, 420 and 120-B of the IPC against petitioner- 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 petitioner-Harish Kathuria and his son Sumit Kathuria with Police Station Indrapuram, Gaziabad. Learned counsel also submitted that the petitioners alongwith his son-Sumit Kathuria are hands in glove with each other in committing fraud upon the complainant. Learned counsel further submitted that petitioners' custodial interrogation is necessary for finding out the *modus operandi* of commission of offence and for recovery of the hefty amount received from 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 from the very inception, the complainant appears to have been enticed by the petitioners alongwith their son-Sumit Kathuria to enter into an agreement to sell in respect of land measuring 22738.76 square yards for a total consideration of Rs.20,01,01,000/- (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 petitioners and their son-Sumit Kathuria who assured the complainant that they 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 petitioners alongwith their son 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 petitioners alongwith their son 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 petitioners' son was found to be forged and not issued by the above said Patwari and the petitioners' son 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 their full complicity with each other. Even in one of the emails sent by the petitioners' son- Sumit Kathuria, 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 petitioners' seller-Company. It has also been revealed that on the basis of disclosure statement made by the petitioners' son-Sumit Kathuria, 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. The petitioners cannot be absolved from the liability of commission of above said offences as they are the Directors of the seller Company and signatories to the agreement to sell and they are the beneficiaries of receiving a hefty amount of rupees seven crores from the complainant by practising fraud upon him.

9. It will not be out of place to notice here that during the pendency of this petition, at the time of issuance of notice of motion, the petitioners were granted *ad-interim* anticipatory bail vide order dated 30.8.2019 passed by this Court which reads as under:-

“The petitioners are seeking anticipatory bail in FIR No.103 dated 23.05.2019, under Sections 420, 467, 468, 471 and 120-B IPC, registered at Police Station Civil Lines, Amritsar. Learned counsel for the petitioners contends that the allegations against the petitioners in the FIR manifest a civil dispute between the parties over sale and purchase of property. *Petitioners 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 petitioners are 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. He also contends that co-accused namely Sumit Kathuria has been granted interim bail by this Court in CRM-M-31288-2019. In that case, two demand drafts for total amount of Rs.50 lacs in favour of the complainant has been handed over to the counsel for the complainant. Issue notice to the respondents, returnable on 23.09.2019.*

Ms. Palak Dev, Advocate has put in appearance on behalf of the the complainant/respondent No.2.

In the meantime, petitioners are directed to appear before the Investigating Officer and join investigation.

In the event of their arrest, the Investigating Officer/Arresting Officer shall release the petitioners on ad-interim bail subject to his/her satisfaction. The petitioners shall remain bound by the conditions envisaged under Section 438(2) Cr.P.C.”

10. Besides this, the conduct of the petitioners before this Court is writ large which is apparent from the facts that on getting *ad-interim* anticipatory bail by the petitioners, the matter was adjourned several times for complying with the terms of settlement. Ultimately the matter came for hearing on 29.3.2022 when the counsel for the petitioners produced a demand draft dated 28.3.2022 of rupees twenty lacs in favour of the complainant-Company and submitted that another rupees 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 petitioners were 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- Harish Kathuria appeared before the Mediator on 25.4.2022, who 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- 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- Harish Kathuria did not bring the said draft. Consequently, the matter was returned back as unsettled to this Court for decision on merits.

11. 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 petitioners and their son-Sumit Kathuria 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.

12. 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 anticipatory bail is granted to petitioners. The conduct of the petitioners is writ large in the matter. Mere fact that *ad interim* anticipatory bail has been granted to petitioners on handing over rupees fifty lacs and rupees twenty lacs to the complainant does not lead to an inference that the *ad interim* anticipatory bail granted by this Court is bound to be confirmed since the deposit of the amount simply enabled the petitioners to explore the possibility of settlement which has failed before the Mediator because of the conduct of the petitioners. The petitioners failed to comply with the order of this Court dated 29.3.2022 whereby the petitioners and their son were directed to hand over a draft of rupees twenty lacs to the complainant on the date fixed for Mediation and to settle the entire matter amicably, but even after adjourning the matter several times by the Mediator on the request of petitioners, the draft was not handed over to the complainant and the matter remained unsettled.

13. From the above, it is apparent that even after taking hefty amount as earnest money against the land in question from the com-

plainant, the petitioners and their son 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-Harish Kathuria and his son's antecedents are not good. Even two more FIRs have been registered against them.

14. From the sequence of events mentioned above, it is manifest that the petitioners alongwith their son are having dishonest intention to cheat and defraud the complainant from the very inception after receiving hefty amount of rupees seven crores from the complainant and their said intention to cheat stands further fortified from the fact that the petitioners have forged the *fard jamabandi* of the land in question in connivance with each other.

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. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in

character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in **State Vs. Anil Sharma, (1997) 7 SCC 187** held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

18. Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case unerringly point towards the complicity of the petitioners and thus custodial interrogation of the petitioners is required to unearth the actual facts.

19. 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 petitioners in the commission of offence in connivance with each other and coupled with the antecedents of the petitioners against whom two more FIRs have been registered, I do not deem it a fit case for grant of concession of anticipatory bail to the petitioners- Harish Kathuria and Yash Kumari.

20. In view of the above, the present petition is dismissed and the order dated 30.8.2019 granting interim protection from arrest of petitioners- Harish Kathuria and Yash Kumari stands vacated and prosecution agency would be at liberty to proceed against petitioners- Harish Kathuria and Yash Kumari, in accordance with law. Misc. Applications, if any, in this petition shall stand disposed of accordingly.

21. 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