

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

CRM-M No.14094 of 2023
Date of decision: 2nd August, 2023

Prateek Rao

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate for the petitioner.

Ms. Trishanjali Sharma, Dy. Advocate General, Haryana
for the respondent/State.

Mr. Preetinder S. Ahluwalia, Advocate for the complainant.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking the concession of bail under Section 438 Cr.P.C. in case FIR No.267 dated 09.12.2022 under Sections 120-B, 406, 420 IPC (Sections 467, 468, 471 IPC added later on) registered at Police Station DLF Phase-I, District Gurugram.

2. Learned senior counsel appearing on behalf of the petitioner submits that the petitioner has been falsely implicated in the case in hand and the dispute, if any, between the parties is essentially of a civil nature and pertains to two agreements to sell dated 29.09.2017 and 06.10.2017. He submits that the main thrust of the allegations levelled against the petitioner is that he misrepresented to the complainant that the petitioner's project was registered with the

Haryana Real Estate Regulatory Authority (hereinafter referred to as, 'HRERA') and still further, a promise was made to the complainant that an amount of ₹ 8.00 lacs per month would be given in lieu of his investment in their project. He has further submitted that the other allegation against the petitioner was that he had played a fraud upon the complainant by claiming himself to be owner in possession of 15 acres of land, whereas the land owned by him was only 8 Kanals.

3. While praying for the grant of anticipatory bail, learned senior counsel has made the following submissions:-

- (i) That the agreement to sell in question was dated 29.09.2017, whereas it was a matter of record that HRERA, Gurugram (Quarterly Progress Report) Regulations, 2018 came into effect only in the year 2018, hence, the allegation levelled by the complainant that the petitioner had assured him qua his project being registered with HRERA stood belied;
- (ii) That there were no terms and conditions in the agreement to sell dated 29.09.2017 qua any assurance having been given to the complainant to return an amount of ₹ 8.00 lacs per month. In support, attention of this Court has been drawn to Annexure P-3, which is the Suites buyer agreement between the parties;

- (iii) That though originally the petitioner's Company was owner in possession of 8 Kanals of land, however, prior to entering into the Agreement to Sell dated 06.10.2017, in question, several persons including one Company namely M/s Golden Feather Constructions Pvt. Ltd. had transferred their lands in the name of the petitioner's Company, by virtue of which the Company had then come into possession of land, totaling 16 Acres 5 Kanals 7.4 Marlas. Therefore, in the circumstances, there was neither any misrepresentation made by the petitioner nor could any dishonest intention be imputed to him.
- (iv) That rather the conduct of the complainant reflected dishonest intention, as he had made factually incorrect averments in the FIR by stating that he had paid the entire amount agreed upon in the Agreement to Sell. In support, attention of this Court has been drawn to Annexure-B (part of Annexure P-4) wherein, in the 'Schedule of Payments', it stands reflected that total amount to be paid was ₹ 3.50 crores, whereas the complainant had admittedly paid only ₹ 2.01 crores. Since it was the complainant himself, who had failed to pay the

entire amount, no construction could be carried out as the construction was payment linked, as per the agreement in question. The petitioner had always been ready to undertake and complete the construction, had the complainant paid the balance amount.

(v) That the Investigating Officer, whose reply weighed with the learned Sessions Court while dismissing the petitioner's application for anticipatory bail, had made incorrect submissions that no license/permission had been obtained by the petitioner from the District Town Planner for developing his project. In support, learned senior counsel while drawing the attention of this Court to Annexure P-6 (page 65 of the paper book), has asserted that it stands reflected that title of the sale deed was qua land which was situated outside the Municipal Area and hence, Section 7 and 7A of the Haryana Urban Development Authority Act, 1977 was inapplicable to the land in question.

(vi) That still further, in the reply filed by the Investigating Officer before the learned Sessions Judge, it had been submitted that the land in question of Prism Suites already stood mortgaged

with Tourism Finance Corporation of India, which was factually incorrect as the petitioner had submitted an affidavit to the said effect. In fact, the tower which had been mortgaged was entirely different from the one where the Suites of the complainant were situated.

(vii) That to show his bonafide, the petitioner had even offered ₹ 75.00 lacs to the complainant which offer strangely had not been accepted by the complainant;

4. Learned senior counsel thus, has urged that it is evident that the case in hand hinges on documentary evidence and nothing is required to be recovered from the petitioner, therefore his custodial interrogation would not be required by the investigating agency. He has submitted that the petitioner is willing to join investigation and cooperate with the investigating agency, and hence, he be extended the concession of anticipatory bail.

5. Per contra, learned State counsel on instructions from SI Dev Dutt, assisted by learned counsel for the complainant, have vehemently opposed the prayer and submissions made by the counsel opposite.

6. It has been submitted that the petitioner had in fact defrauded the complainant of a whopping amount of more than ₹ 3.00 crores by luring him into investing in two projects, i.e. 'Mountain View Greens Phase-I' and 'Prism Hotel and Suites', even though the

petitioner was conscious from the very beginning that the above two projects would never see the light of the day.

7. With respect to the project “Mountain View Greens”, it has been submitted that an agreement to sell dated 06.10.2017 was entered into between the complainant and the petitioner, wherein a farmhouse of one acre was agreed to be sold to the complainant for a total sale consideration of ₹ 2.01 crores. It was provided for in the aforementioned agreement to sell that the complainant would be provided with complete landscaping, 10 feet boundary-wall, 15 feet wide gate, car park bay, internal pathways along with a water body, etc. Besides this, roads electricity connection, uninterrupted water supply would also be part and parcel of the offer. In support, learned counsel for the complainant has drawn the attention of this Court to Clause 8.8 of the agreement to sell (Annexure P-4) and the site plan, which has been annexed as (Annexure A). All of this construction and facility was to be provided to the complainant for ₹ 2.01 crores and not ₹ 3.50 crores as had been argued by the counsel opposite. It has been further vehemently argued that a totally incorrect and misleading statement has been made by the learned senior counsel opposite qua the complainant not having paid the entire sale consideration for the project i.e. Mountain View Greens. Learned counsel, in support, has drawn the attention of this Court to Annexure P-4, wherein it stands reflected that the entire sale consideration for the project was in fact ₹ 2.01 crores

and the same had been paid by the complainant, and the said document had been duly signed by both the parties.

8. Learned counsel for the complainant, while drawing the attention of this Court to Annexure-B, relied upon by the petitioner, wherein total sale consideration stands reflected as ₹ 3.50 crores, has asserted that it was a forged document and furthermore, a perusal of the same clearly revealed that it had not been signed by both the parties but only by the petitioner.

9. Learned State counsel as well as the learned counsel appearing on behalf of the complainant have further submitted that after registration of the FIR in question, during investigation offence under Section 467 IPC had now been added against the petitioner in view of the above forgery committed. It has, still further been submitted that the petitioner had shown himself to be owner in possession of 15 acres of land on the basis of one document annexed as Annexure P-6. However, during investigation, it had come to light that even after including the land which was transferred in the name of the petitioner's Company by the parties as per Annexure P-6, the total land came out to be just 45 Kanals 14 Marlas and not 15 acres, as claimed. Learned counsel has further submitted that the petitioner's Company in fact was owner in possession of only 8 Kanals of land. It has been argued by the learned State counsel that in fact this was a *modus operandi* adopted by the petitioner whereby not only had he duped the complainant, but had been duping a number of innocent people

including one Anjana Batra to whom petitioner had misrepresented himself to be the owner in possession of 22 acres of land. Therefore, a huge fraud having been committed by the petitioner was writ large as not only had he falsely shown his Company to be owner in possession of 15 acres of land, but in addition he was perpetuating the fraud by fabricating documents. Learned counsel has also urged that the agreement to sell was signed and executed almost six years back and the entire consideration amount had been paid by the complainant, yet not a single piece of brick had been laid on the site. The petitioner had not even obtained any license or permission, as required, from the Department of Town and Country Planning to develop the project, and all the above facts and circumstances when seen in their totality, made it apparent that the petitioner had no intention to start any construction on the site, much less, to complete the project.

10. Learned counsel, while referring to the second project, i.e. 'Prism Hotel and Suites', submits that the agreement to sell dated 29.07.2017 was entered into between the parties qua the same, wherein the petitioner had promised that two Suites in lieu of consideration amount of ₹ 1,23,20,000/- shall be transferred in the name of complainant. After the petitioner had duped the complainant of a huge amount, it had then come to light that the aforesaid property i.e. 'Prism Hotel and Suites' already stood mortgaged with Tourism Finance Corporation of India. While drawing the attention of this Court to Annexure R-2/2, which is a show cause notice sent to the petitioner by

MC Gurugram, it has been submitted by learned counsel that the terms of Change of Land Use (CLU) did not permit sub divisions i.e. where the Suites were to be sold separately to different persons. However, yet again, by concealing this fact, the petitioner played a fraud by selling two Suites and duped the complainant of his money. Learned counsel submitted that even six years after execution of the agreement to sell with respect to 'Prism Hotel and Suites', the complainant had not been given the possession of the said Suites. It was thus, evident that the petitioner did not intend to sell the Suites to the complainant from the very beginning, as he was well aware of the conditions which were imposed in the CLU.

11. Learned State counsel, on instructions, has vehemently prayed for dismissal of the instant petition, by submitting that the petitioner is a habitual offender as he has duped a number of innocent people, which is evident from the fact that there are two other FIRs lodged against him after registration of the FIR in question. It is submitted that as and when any FIR is lodged against the petitioner, he succeeds in exerting pressure on the complainants and settle the dispute with his money power. Learned State counsel submits that custodial interrogation of the petitioner is thus required, more so, since the projects qua which the complainant has been duped of a huge amount of money, are located in the National Capital Region, wherein such like crimes have been on the rise.

12. I have heard learned counsel for the parties and perused the relevant material on record.

13. Without doubt, this is one of those cases which requires custodial interrogation of the petitioner. The gravity of the offences alleged in the FIR in question, can certainly not be ignored by this Court. Prima facie, the petitioner, comes across as a habitual offender, who has played a huge fraud by cheating the complainant of crores of rupees. The offences of the kind in hand are on the rise and require to be dealt with, with an iron hand. This Court, thus, concurs with the prayer made by the learned State counsel that the petitioner’s custodial interrogation would be required in the case in hand. The petition accordingly stands dismissed.

14. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

August 2, 2023
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No