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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-19216-2023 (O&M)
DECIDED ON: 16.05.2023

SUMIT KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Karan Nehra, Advocate and
Ms. Mahima Dogra, Advocate for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

Mr. Anil Mehta, Advocate and
Mr. Annirudh Sharma, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 of Cr.P.C., for grant of regular bail to the petitioner in FIR No.199 dated 21.07.2022, under Section 120-B, 389 (Sections 418 and 420 of IPC added later on), registered at Police Station Sector-65, Gurgaon (Annexure P-1).

The contents of FIR reads as under:-

This case was registered on a complaint made by Sanjeev Bindal, authorised representative of IREO Residences Company Pvt. Ltd, wherein he alleged that complainant company is in business of developing Group Housing Townships, Coimercial and other *projects in and around Gurugram. In the year 2004, IREO Fund was incepted in Mauritius as a multinational private fund with the primary objective of developing high quality residential, commercial and hospitality projects in India. In furtherance of the same, various companies were established by IREO Fund in India. All these companies were established, as separate and distinct entities for the purposes of launching and developing various projects in India. The complainant company was established on 16.06.2010. Subsequent to establishment of the complainant company by IREO Fund, on 03.07.2014, Ramesh Sanka (accused) was appointed as Chief Operating Officer-Greater Gurgaon. He was also responsible for the managing operations and affairs of all the projects being undertaken by the companies, established by IREO Fund in Gurgaon and Sohna area. Ramesh Sanka had access to all the confidential information of the complainant company such as layout plants, municipal approvals, financial statements, customer record etc of various proiects launched by the various companies of IREO Fund in Gurgaon and Sohna. Ramesh Sanka worked with various IREO companies and managed the projects being developed in Gurgaon and Sohna up till the date of his resignation on 28.12.2016.At the time of his resignation, Ramesh Sanka executed an Employee separation, Confidentiality, Inventions, Non-Competition and Non-Disparagement agreement dated 28.12.2016 with IPL, and complainant company and IPL undertook to pay him an amount of Rs. 10,37,39,409/- as severance fee. The accused undertook to take necessary precautions to safeguard the confidential information of the complainant company.*

After 30.09.2017, Ramesh Sanka arm-twisted the complainant company to pay back the amounts paid by the accused person for booking the two apartments in the Grand Hyatt Residences Proiect of the complainant company causing harm to the completion/development of the project and initiated false and frivolous proceedings against the various companies incorporated by IREO fund in India, so as to extort monies from them illegally and to cause wrongful losses to them by misrepresenting the records of the companies. In addition to the above, Ramesh Sanka made illegal use of the confidential information of the complainant company ie customer data, which he had access to during the course of his employment with IPL, IGR and the complainant company. Accused using data of the complainant company started contacting the company's clients and convinced them that they should hire his services to file complaints against the complainant company and others. He misrepresented the clients that monies paid by them for booking plots in the project launched by the complainant company have been siphoned off by the complainant company and only he can recover the monies for them Complainant company has come in possession of certain emails which show that before his severance from the IREO companies, Ramesh Sanka forwarded various emails containing confidential information and documents from his official email ID to his personal email ID. In furtherance of the aforesaid systematic criminal design adopted by the accused Ramesh Sanka, he colluded with the other accused Sumit Kumar, Vivek Sehgal, Col. Sanjeev Dhawan, Gurinder Singh and other unknown persons, in order to make wrongful gains at the cost and *expense of the complainant company, incorporated the accused Limited Liability Partnership namely Ghar Samadhan LLP on 15.01.2020. Only purpose of the accused was to extort monies from the customers of the complainant company by misleading them, about the actual status of the funds provided by them to the complainant company for booking plots. Accused persons by means of manipulating the records of the complainant company, portrayed to the customers of the complainant company that for recovery of the monies paid by them to the complainant company, litigations will be instituted on their behalf by Ghar Samadhan LLP. The home-buyer was directed to make a payment of Rs.2,36,000/- to the accused LLP for instituting the legal proceedings on his behalf against the complainant company before various forums and used the innocent home buyers/clients against the complainant company. In this way, accused managed to file a number of complaints/ litigations by the home buyers against the complainant company and demanded Rs. 10 crores from the complainant company to manage the withdrawal of the said complainants/ litigations filed by home buyers/clients. The complainant company has various audio recording in its possession wherein the accused persons are openly asking for huge money for taking back the false and frivolous complains/FIRs filed by making extortion threats to the IREO companies and their directors! employees thereby taking undue advantage of innocent home buyers of IREO companies. Accused LLP also entered into agreements with various home-buyers of the complainant company and initiated multiple proceedings, claims, complaints etc against the complainant company in order to make wrongful gain*

> *and caused wrongful loss to the complainant company by misusing the confidential information of the complainant company. On these facts, a request for taking necessary action against the accused was made.*

2. Affidavit of Siddhant Jain, IPS, Deputy Commissioner of Police, South, Gurugram alongwith Annexures R-1 to R-4 is taken on record subject to all just exceptions.

3. Mr. Vinod Ghai, learned Senior counsel appearing for the petitioner contends that the offences under Sections 389, 420, 120-B and 418 of IPC are not prima facie made out even on a bare perusal of the FIR, as has been narrated therein. It is his contention that the evidence whatsoever has been collected by the Investigating Agency so far pertains to the accused persons namely Ramesh Sanka and Vivek Sehgal. He has also referred to the fact that statements of three home buyers namely Satya Kapoor, Gautam and Sunil Kumar have been recorded by the Investigating Agency, wherein no allegation qua the petitioner has come forth and in fact it is the other two co-accused persons against whom the offence, if any is made out.

4. Learned State counsel on instructions submits that the petitioner is a signatory to 18 agreements out of 19 agreements to get the money back with the home buyers giving them false assurance, out of 19 agreements.

In addition to the assertions raised by learned State counsel, learned counsel for the complainant submits that the petitioner is also guilty of supplying information to home buyers and other investors, which he was not authorised or supposed to disclose as an ex-employee of the complainant company namely IREO.

5. Having perused the narrated part of FIR including the role qua the petitioner and the submissions made by counsel for respective parties, this Court has to examine the attraction of Section 420 of IPC, as to whether any such offence is made out against the petitioner , which would be inconclusive without looking at Section 415 of IPC.

6. Before culminating the view, it would be appetite to have a glance at the definition of Section 420 IPC, which reads as under:-

> *"420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

7. The ingredients of an offence of cheating have been crystallized by the Apex Court in '***SW PalaNitkar versus State of Bihar-2002 SCC(Cri.) 129'*** as:-

> *"(i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and*

> *(iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm .to the person induced in body, mind, reputation or property."*

8. In fact the definition of cheating has been derived in Section 420 IPC from Section 415 IPC and therefore, both the sections are to be read inconsonance with each other and therefore, it mandates this Court to have a glance on this provision as well, which reads as under:-

> *"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*
> *Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.*

9. After having discussed the statutory provisions as incorporated hereinabove and the submissions of three home buyers, who are actually the aggrieved persons have not made any complaint qua the petitioner and, therefore, the question of any breach of trust, cheating and inducement would not arise prima facie in the instant FIR, as far as the role of the petitioner is concerned at this stage, while considering the application for grant regular bail.

10. It is also not in dispute, as has been depicted in the custody certificate that the petitioner has suffered incarceration of 2 months and 24 days, who is not involved in any other case, meaning thereby he is not an

habitual offender. As far as the contention of advancing the threats to other witnesses or tampering with the material evidence is concerned, though the same is in the custody of Investigating Agency and has already been made part of challan, after completion of the investigation, which stands presented before the concerned Court on 20.04.2021, this argument is of no help either to the State or to the complainant by any stretch of imagination inasmuch as there is no substance in it lacking any cogent material to support this plea.

11. This Court shall also borne in mind hat no useful purpose would be served by keeping the petitioner behind the bars for uncertain period, as trial will certainly take long time. Another aspect can not be lost sight by this Court that bail is a rule and jail is an exception and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been discussed by this Court in the case of ***"Baljinder Singh @ Rock vs. State of Punjab;*** ***CRM-M-25914-2022, decided on 03.03.2023***, while relying upon a judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131.*** The relevant extract is reproduced as under:

> *"2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet Signature Not Verified Digitally signed by SANJAY KUMAR Date: 2018.02.06 another important facet of our criminal jurisprudence is that the grant of 23:32:05 IST Reason:*

bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

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7. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

12. In light of the above enumerated circumstances and the case law, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned.

13. The present petition is, hereby, allowed.

(SANDEEP MOUDGIL)
JUDGE

16.05.2023

Meenu

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