

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20467-2020
Date of Decision:03.08.2023

Sh.Sanjay Gokal @ Sanjay Sharma

...Petitioner

Vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Harlove Singh Rajput, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Akshay Bhan, Sr. Advocate with
Mr. HPS Sandhu, Advocate and
Mr. Akhilesh Barak, Advocate
for the complainant.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 438 Cr.P.C with a prayer to grant anticipatory bail to him in a case arising out of FIR No. 186 dated 10.07.2020 under Sections 406, 420 and 506 of IPC, registered at Police Station Division No.6, District Jalandhar (Annexure P-1).

2. The brief facts, which are relevant for the adjudication of the present bail application, are that Sukhwinder Singh Bajwa, complainant, moved a complaint to the police that the accused had executed an agreement to sell dated 6.12.2018 regarding the sale of property No.275/L, situated at Jalandhar after receiving a sum of Rs. 4.5 crores in cash from the complainant from time to time. However, the accused did not execute the sale deed on the date fixed, i.e 06.12.2019. After this, the accused again took the complainant in confidence and executed another agreement and a Will in his favour. However, the accused did not come forward to execute the sale deed, as per the terms of the

agreement. He had also assured to get the loan amount of the bank cleared and thereafter, to execute the sale deed, but nothing was done by him. A *Panchayat* was convened and the complainant agreed to return the amount of Rs.6.5 crores. However, after some time he started threatening the complainant and also refused to execute the sale deed or to return the amount to him. Consequently, the complainant prayed for taking action against the accused.

3. The bail application was filed by the present petitioner before this court and the orders have been mentioned below in chronological orders:-

27.07.2020

Learned counsel for the complainant submitted that his clients are willing to get the sale deed executed or to accept earnest money back along with compensation, as had been agreed amongst the parties before Panchayat. Both the counsel for the parties submitted that there were chances of some amicable settlement and they would make an effort to get the mediation effective through video conferencing or through some other means. Consequently, in the meanwhile, the arrest of the petitioner was stayed in view of the above referred stand. The matter was adjourned to 24.08.2020.

24.08.2020

The case was adjourned on request made by learned counsel for the petitioner to seek instructions and the arrest remained stayed. However, it was made clear that no further request for adjournment shall be entertained and interim directions shall stand vacated in case of further adjournment. The case was adjourned to 31.08.2020.

31.08.2020

The petitioner sought for an adjournment on the ground that another FIR has been lodged by Sukhraj Singh,

brother of Balraj Singh against the petitioner for the offence of cheating the persons on the pretext of sending them abroad. On his request, the case was adjourned to 09.09.2020. However, the interim order was continued.

09.09.2020

The case was adjourned to 16.09.2020 and the interim order was continued.

16.09.2020

The main case was adjourned to 23.09.2020 and the interim order was continued.

23.09.2020

Certain documents were filed by the present petitioner and the case was adjourned to 28.09.2020.

28.09.2020

Learned counsel for the petitioner was in some personal difficulty and the case was adjourned to 30.09.2020.

30.09.2020

The case was heard at length by this Court. Both the learned senior counsel were ad idem that as a matter of fact, Rs.1.75 crores was paid by way of either bank instruments or bank transfer to the petitioner by the complainant, which the petitioner is admittedly willing to return to the complainant by way of installments as follows:-

- (i) Rs.50,00,000/- to be paid by 10.10.2020.*
- (ii) Rs.50,00,000/- to be paid by 31.10.2020 and*
- (iii) Rs.75,00,000/- to be paid by 30.11.2020.*

Even though the complainant stated that an additional amount of Rs.2.75 crore was also paid to the accused, but the petitioner only agreed to return 1.75 crore in installments. Ultimately, the amount of Rs.1.75 crores was to be paid to the petitioner in installments, as noticed hereinabove and the same

would be paid in the name of Registrar (Judicial) of this Court, who shall immediately deposit the said amount in a nationalised bank, carrying interest thereon, to be disbursed after final decision of the petition. Since the petitioner had agreed to return the amount of Rs.1.75 crores, the interim order in favour of the petitioner was ordered to be continued till the next date of hearing and the case was adjourned to 03.11.2020.

03.11.2020

The case was adjourned to 11.12.2020 and the interim order was continued.

11.12.2020

Since the learned counsel for the petitioner was not available, the case was adjourned to 14.01.2021.

14.01.2021

The case was adjourned to 04.03.2021.

04.03.2021

The case was adjourned to 24.03.2021 and the interim order was continued.

24.03.2021

Adjourned to 31.03.2021.

31.03.2021

Adjourned to 18.05.2021 and the interim order was continued.

06.09.2021

It was noticed by this Court that amount of Rs.50 lacs and Rs.75 lacs, which were to be deposited by 10.10.2020 and 30.11.2020 with the Registrar of this Court, had not been deposited so far, learned counsel for the petitioner again sought adjournment to comply with the orders and the case was adjourned to 21.09.2021 and the interim order was continued.

21.09.2021

It was adjourned to 30.09.2021 on request made by learned counsel for the petitioner. It was stated that no request for further adjournment shall be entertained in any eventuality.

30.09.2021

The case was adjourned to 04.10.2021.

04.10.2021

This Court noticed the conduct of the petitioner in not complying with the various interim orders passed by this Court. However, with the concurrence of the learned counsel for the complainant, the petitioner was granted 10 days time to comply with the order dated 30.09.2020 and the case was adjourned to 29.11.2021.

29.11.2021.

A request was made by the petitioner to refer the matter to the Mediation and Conciliation Center, but the complainant was not agreeable to such a course as the petitioner had flouted the orders dated 04.10.2021 and 30.09.2020 passed by this Court.

16.03.2022

The case was adjourned to 26.05.2022.

26.05.2022

The case was adjourned to 01.06.2022 and the interim order was continued.

01.06.2022

On request made by learned counsel for the petitioner and the case was adjourned to 22.07.2022 and the interim order was continued.

22.07.2022

The case was not taken up.

27.07.2022

Learned counsel for the petitioner again made fresh offer to settle the dispute amicably and stated that the petitioner is ready to deposit an additional amount of Rs.1.75 crores along with interest within a month. Apart from that, 50 lacs already deposited by the petitioner on 29.10.2020 and again it was adjourned to 10.08.2022 as the petitioner had to arrange the money to enter into the settlement.

10.08.2022

On request made by learned counsel for the petitioner, the case was adjourned to 17.08.2022 and the interim order was continued.

17.08.2022

The case was not taken up and was adjourned to 14.09.2022.

14.09.2022

The learned counsel for petitioner submitted that the petitioner had agreed to deposit a sum of Rs.1.75 crores along with interest only after selling the property i.e house No.275/L, Model Town, Jalandhar, however, it was stated that the commercial court had stayed the alienation of the same and as such the petitioner was unable to deposit the money. The case was adjourned to 07.11.2022 and the interim order was again continued.

07.11.2022

The case was not taken up and adjourned to 09.12.2022.

09.12.2022

This Court noticed that admittedly, the petitioner failed to comply with the directions passed by this Court and it was brought to the notice of the Court that the petitioner had sold

certain part of the property in question, to some other person, without prior permission of the Court concerned and this Court did not extend the interim order dated 27.07.2022, whereby the arrest of the petitioner was stayed. For the purpose that the petitioner would be able to arrange the requisite money, which was to be paid by him in the light of the settlement arrived at between the parties. The case was adjourned to 20.12.2022.

20.12.2022

The matter was adjourned to 20.01.2023 and the interim order was again ordered to be continued.

20.01.2023

The matter was adjourned to 09.02.2023, however, the interim order was not extended.

09.02.2023

Learned counsel appearing on behalf of the petitioner again made a prayer that there were still chances of amicable settlement between the parties and by the next date of hearing, the petitioner would come up in writing with regard to the proposed settlement, which he intended to effect with the complainant party. The Court held that the needful should be done by the next date of hearing and only written proposal would be entertained, otherwise the matter would be heard on merits and the matter was adjourned to 12.04.2023.

12.04.2023

Learned State counsel on instructions from SI Baljit Singh stated that after the vacation of order of interim protection, the police had raided the premises of the petitioner, on which it was found that the petitioner had already left India and had gone to some other country. Even the learned counsel for the complainant informed that the petitioner had left the country without informing the court and in the given circumstances, the anticipatory bail deserves to be dismissed only on this ground.

Learned counsel appearing on behalf of the petitioner again prayed for adjournment to seek instructions. The case was adjourned to 20.04.2023.

20.04.2023

The complainant again stated that the petitioner was in Canada and the directions were given to the learned State counsel to give in writing that the petitioner was not in India and the matter was adjourned to 25.05.2023.

25.05.2023

A short reply was filed by way of an affidavit of ACP, Model Town, Jalandhar and on request, made by learned counsel for the petitioner, the case was adjourned to 03.08.2023. Even in the said status report, the State of Punjab had informed this Court that the petitioner had departed from Delhi Airport on 25.11.2022 to Canada and he was living in Canada.

03.08.2023

4. The case was heard at length today. It is apparent that the petitioner is still living in Canada, after the vacation of the interim orders passed by this Court. Apart from that, the petitioner had admittedly failed to comply with all the undertakings given by him from time to time.

5. Today, I have heard learned counsel for the parties and with their able assistance; I have gone through the record carefully.

6. The Hon'ble Supreme Court has held in the matter of **Ram Preeti Yadav vs. UP Board of High School and Intermediate Education and Ors, AIR 2003(Supreme Court) 4268** as follows:

13.Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter.

Although negligence is not fraud but it can be evidence on fraud.(See Derry Vs. Peek (1889) 14 AC 337).

14.In Lazarus Estate v. Beasley [(1956) 1 All England Reporter 341] the Court of Appeal stated the law thus:-

“I cannot accede to this argument for a moment “no court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, not order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything”. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever.”

15.In S.P. Chengalvaraya Naidu V.Jagannath [(1994) 1 SCC 1], this Court stated that fraud avoids all judicials acts, ecclesiastical or temporal.

7. From the above referred chronology of events, it is apparent that the present petition was pending before this court since 27.07.2020 and remained pending for over two years before this court. On the very first date of hearing, the petitioner expressed his willingness to get the sale deed executed in favour of the complainant or to return the earnest money back to the complainant along with compensation. In view of the chances of amicable settlement between the parties, and to ensure a mediation between the parties, the arrest of the petitioner was stayed. From the above referred orders passed by this court, it is further established that for almost two years, the petitioner made the false statements to ensure the continuation of interim orders passed by this

court and adopted all dilatory tactics. In fact the course adopted by the petitioner is impermissible as every attempt has been made to delay the disposal of the bail by making false statements before this court successively. No litigant has unlimited right over the Court time and public money, in order to get his affairs settled in the manner as he likes. Rather in the considered opinion of this Court, easy access to justice cannot be permitted to be misused by a litigant and the petitioner is not entitled to any equitable relief from this Court. Rather from the facts of the case, it is also apparent that the petitioner had cheated the complainant to the tune of crores of rupees by making a false representation to him. He not only made false statements before this Court, just to take undue advantage, but also sold a part of the property in question to someone, just to deprive the complainant of his due. Apart from that, when the interim order was not continued, as the petitioner was adopting all tactics to delay the proceedings, he left for Canada on the false pretext of his medical treatment and apparently he left India just to evade the process of law. Apparently, this Court has reasons to believe that in case the petitioner is admitted to the concession of anticipatory bail, he may flee from the process of justice and may also influence the prosecution witnesses at this stage.

8. Apart from that, he has cheated the complainant to the tune of crores of rupees and his custodial interrogation at this stage would be required. Finding no merits, the present petition is ordered to be dismissed.

03.08.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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