2023:PHHC:149761

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

219

CRM-M-40166-2023
Date of decision : 14.11.2023

Anup Sharma **...... Petitioner**

versus

The State of Punjab **...... Respondent**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Abhishek Khullar, Advocate for
Mr. J.S. Jaidka, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

Mr. Bhanu Pratap Singh, Advocate
for the complainant.

****

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioner in case bearing FIR No.96, dated 26.07.2023, registered for the offences under Sections 406 and 420 of IPC, 1860 at Police Station Sarabha Nagar, District Ludhiana.

2. Indulgence was shown to the petitioner only for mediation and conciliation purpose.

3. Admittedly, the petitioner never responded to the mediation and conciliation proceedings. Thereafter, on 18.10.2023, one last opportunity was granted to the petitioner to return the car. Admittedly, he failed to return.

4. As per the contents of the FIR, it has been alleged as under:-

"At this time an application PGD NO.

65342+COMPLAINT NO. 61472 Dated 09/11/22 from Rahul Jain against Anup Sharma R/o 610-C, Rajgarh Estate, South City Ludhiana for the registration of FIR was given to the Hon'ble Commissioner of Police. That after the completion of investigation on this complaint, it has been received in the police station by post for the registration of FIR against opposite party Anup Sharma. That the complainant in his complaint has mentioned that, "To The Commissioner of Police, Ludhiana Sub: Criminal complaint under sections 406/420 of the IPC against Anoop Sharma s/o Ram Lal, resident of Flat No. 610-C, Rajgarh Heights, Rajgarh Estate, Ludhiana and permanent resident of VPO Matlahar, Tehsil Jawali, District Kangra (Himachal Pradesh) (Mobile No. 97813-27000). Note: AU Small Finance Bank has filed one Police Complaint, which is pending in EO Wing, Ludhiana against the applicant. The complainant respectfully submits as under- 1. That the complainant is the registered owner of Car Audi A6 2.0 TDO, bearing Registration No. PB-652-7424, Model 2013, bearing Engine No. CMG015843, Chassis NO. WAUZGD4 G2DY002905 registered 17.10.2014. The said vehicle was got financed by the complainant from AU SMALL FINANCE BANK and the same stands pledged with the said Bank. 2. That the accused approached the complainant and entered into an agreement dated 8.2.2021 with the complainant, whereby the accused agreed to purchase the said vehicle from the complainant for a total sale consideration of Rs. 12,70,000/- (Rupees twelve lacs & seventy thousand only), out of which he paid a sum of Rs.2,50,000/- (Rupees two lacs & fifty thousand only) as down payment to the complainant at the time of execution of the amount. At that time, the said agreement Rs. 15,40,000/- approximately remained outstanding against the complainant towards remaining amounts all the to agreed deposit and the accused remaining instalments of Rs. 15,40,000/-with the Financier/Bank. The amount of monthly installment Rs.53,000/-(Rupees fifty-three thousand only) approximately per month and accused agreed to deposit the same every month from his own pocket with the Financer/Bank w.e.f. 5th March, 2021. It was agreed that the complainant shall clear the remaining amount of Rs. 2,70,000/- within three months or in the alternative the complainant shall contribute Rs. 10,000/- to Rs. 15,000/- per month on the monthly installments to be paid to the Bank to the tune of Rs. 2,70,000/-in total. It was agreed that in case of failure on the part of the accused to deposit the installments, the complainant shall have the right to take back possession of his aforesaid car and shall have the right to forfeit the amount whatever the accused paid to the complainant or deposit with Financier/Bank of the physical possession of the said vehicle was handed over to the accused at the time of entering into the said agreement between the accused and the complainant and it was agreed that from the date of entering into the said agreement, the accused shall be held responsible for all kinds of challans, accidents, police cases and all kinds of damages/losses with respect to the aforesaid vehicle/car. 3. That the accused have dishonestly remained in breach of his obligations under the aforesaid agreement and dishonestly with a malafide intention failed to deposit even a single installment with the Bank. The complainant on his part has duly deposited the amount of Rs. 2,70,000/- with the Bank in performance of his part of the aforesaid agreement. The accused has had a dishonest intention right from the very beginning and he dishonestly and fraudulently induced the complainant to enter into the aforesaid agreement and to entrust the aforesaid car to the accused. Without paying the amount as per the aforesaid agreement, the accused has no right to retain the possession of the aforesaid car. The failure and default on the part of the accused in paying the amount to the Bank has also exposed the account of the complainant to be classified as NPA and unnecessarily exposing the complainant to loss, injury and damage to his goodwill and reputation. The accused is liable to forthwith stop the user of the aforesaid car and to return the same to the complainant. The amount paid by the accused under the aforesaid agreement has been forfeited on account of his willful breach and default. 4. That the complainant through his counsel had even served a legal notice dated 20.9.2022 on the accused calling upon him to return the bearing A6 2.0 TDO, aforesaid Car Registration No. PB-652-7424, Model 2013, bearing Engine No. CMG015843, Chassis No.WAUZGD4 G2DY002905 to the complainant within three days from the service of the said notice. Despite the due service of the said legal notice, the accused dishonestly failed to comply with the same and false reply issued through his rather got counsel deliver Audi. 5. That from the above, it is apparent that the intentions of the accused were dishonest from the very beginning. He with a dishonest

> intention induced and deceived the complainant in entering into the aforesaid agreement with him and to the possession of the aforesaid car to the accused without the accused actually intending to abide by the terms of the agreement and to pay the installments to the Bank. The aforesaid act and conduct of the accused has rather exposed the complainant to face the proceedings of the Bank and to face the resultant injury, loss and damage to his goodwill and reputation. The accused is illegally neither paying the installments to the Bank nor returning the aforesaid car to the complainant. Even the Bank has lodged a complaint in relation to the aforesaid car and the accused is deliberately concealing the aforesaid car and avoiding it to be returned. The accused has committed breach of trust and cheating and fraud with the complainant to dispose off. He is even threatening aforesaid car and to create third party interest in the same without clearing his liability aforesaid acts has 6. That the accused by his committed offences punishable under sections 406 and 420 of the IPC. The offences have been committed by the accused within the jurisdiction of Police at Ludhiana. The offences are cognizable and non-bailable in nature. It is, therefore, respectfully prayed that an FIR under Sections 406 and 420 of the IPC may kindly be got registered against the accused and he be arrested and the aforesaid car be immediately got recovered from the illegal possession of the accused and justice be got done to the complainant."

5. Keeping in view the allegations levelled against the petitioner and the conduct he has shown after indulgence was granted by

this Court, the present petition is dismissed.

6. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

14.11.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No