

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58362-2022
Date of decision : 09.01.2023

Manoj Kumar

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Aggarwal, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Onkar Singh Batalvi, Advocate and
Mr. D.S. Batalia, Advocate
for the complainant.

PANKAJ JAIN, J. (Oral)

Present petition has been filed under Section 439 Cr.P.C. seeking regular bail in FIR No.206 dated 05.10.2021, registered for offences punishable under Sections 417, 419, 420, 465, 467, 468, 471 and 120-B of IPC (Section 201 IPC enhanced vide GD No.2 dated 11.07.2022), at Police Station Sujanpur, District Pathakot.

2. The dispute between the parties has a chequered history. An FIR was registered at the behest of the petitioner against the complainant bearing FIR No.326 dated 22.10.2017 registered for the offences punishable under Sections 420, 506 and 34 IPC, Police Station Nurpur, District Kangar. On the other hand, petitioner was facing enquiry on the basis of a complaint/application filed by the complainant before the Deputy

Superintendent of Police, Special branch vide peshi/entry No.2135 dated 26.10.2017.

3. Parties agreed to bury the hatchet and reconciled their differences vide compromise deed dated 20.03.2018 placed on record as Anneuxre P-4. At this point of time, Mr. Batalvi submits that the said compromise was preceded by a memorandum of understanding dated 19.03.2018 placed on record with the written statement filed by the complainant as Annexure R-C/1. (The aforesaid document R-C/1 has been opposed by Senior counsel for the petitioner). However, compromise dated 20.03.2018 is not in dispute. The operative part of the same reads as under:-

“This compromise has been made between the parties as under on dated 20.03.2018, that several cases have been pending between the parties in different courts and both of them wishes to end their dispute through this compromise deed and want to live in peace in future, the above said parties as under.

1. That the party no. 1 has got registered a FIR no. 326 dated 21.10.2017 U/s 420, 506 and 34 IPC at Police Station, Nurpur Jairdhara, against the Party No. 2, which is pending at P.S. Nurpur and party No. 2 has submitted one application against the party no.1 before Deputy Superintendent of Police Special branch vide peshi/entry no. 2135 on dated 26.10.2017, which is also pending.
2. That now, both the parties have compromised the matter and their dispute regarding land/properties has also come to an end and both the parties does not want to take any kind of action against each other and will withdraw the pending cases as above mentioned.
3. That the above said compromise has been entered into by both the parties without any pressure and

in their respective sound disposing minds, so that the same can be used at the time of need.

4. any fear, threat and fraud or without undue influence. Infact, the above said compromise was affected among the parties with their own free will and consent. The above said parties affected the compromise with the soul purposes that enmity came to an end among the parties and parties can lie brotherhood.”

4. It appears, the parties again fell apart. A complaint was filed at the behest of the complainant before Delhi Police which resulted in registration of FIR No.794 dated 17.11.2019 (Annexure P-8). In the said FIR, petitioner preferred bail application which was dismissed vide order dated 27.11.2019 (Annexure P-9). A perusal thereof would reveal that the scope of the investigation in the said FIR included alleged purchase of property by the accused by misusing documents procured through Sulakhan Singh and the allegations of impersonation. The said proceedings finally culminated in the order of discharge dated 16.03.2020 (Annexure P-11), whereby all the accused(s) including the petitioner stood discharged. Revision against the same was preferred by respondent-complainant. Specific averments made in the revision petition referred to by the senior counsel for the petitioner read as under:-

“xx xx xx

- “D. That further during the investigation, it was revealed that the Respondent No. 3, already known to the Revisionist, has transferred the properties of the Revisionist in his own name with the help of the Respondent no. 4 Le. Raman Kumar S/o Shambhu Dutt Sharma R/o 20, Gali No. 2 Shivji Nagar, Waziran, Tehsil Nurpur, District Kangra,

Himachal Pradesh and hence, accordingly both, the Respondent No. 3 and 4 i.e. Manoj Kumar and Raman Kumar were arrested on 19.11.2019 from Pathankot Division No. 2 Police station Punjab, and thereafter, the Respondents No. 2 and 4 i.e. Sulakhan Singh, Manoj Kumar and Raman Kumar, were produced before the court of Metropolitan Magistrate at Rohini Courts, Delhi whereupon the Hon'ble court at Delhi was pleased to grant the 5 days Police Custody (PC) Remand of both the Respondent No. 2 and 4 i.e. Sulakhan Singh, Manoj Kumar and Raman Kumar to the police officials of PS Samipur Badli.

G. That further during the investigation, it has also come on record that the Respondent No.3 to 5 is actively involved in the commission of the crime and the Respondent No.3 i.e. Manoj Kumar, is the mastermind in the commission of the crime.”

5. The said revision petition was withdrawn vide order dated 02.03.2022 on the ground that the cognizance qua the offence relating to property in question has already been taken by the Punjab and Haryana High Court. The order reads as under:-

“xx xx xx

An application for withdrawal of the present case is filed on behalf of the petitioner alongwith the copy of the translated copy of FIR registered in Punjab against the respondents.

It is submitted by Ld. Counsel for petitioner that he has instructions from the appellant to withdraw the present petition as the cognizance qua the properties in question has already been taken by the Hon'ble Punjab and Haryana High Court at Chandigarh. He seeks permission in this regard.

Heard.

Separate statement of Ld. Counsel for the petitioner is recorded in this regard.

In view of same, the present revision petition stands disposed of as withdrawn.

Trial Court Record be sent back to the concerned court.”

6. The cognizance at the hands of this Court as referred to in the order dated 02.03.2022 in fact connotes the directions issued by this Court in the petition filed by the complainant under Section 482 Cr.P.C. in CRM-M-29249-2021 vide order dated 28.07.2021, whereby the complainant petitioner claimed that he has submitted representations dated 23.09.2020, 20.01.2021 and 28.04.2021 which have not been acted upon by the police authorities. The said criminal petition was disposed off by the Court by issuing directions to the respondents to look into and decide the representations (supra) in accordance with law by passing speaking orders. It was acting on such representation that the present FIR was registered.

7. Senior counsel representing the petitioner submits that the said order dated 28.07.2021 was in fact procured by the petitioner by concealing the material facts w.r.t. the discharge proceedings effectuated by the Courts at Delhi. He submits that not only that, even before the police authorities at Pathankot, the petitioner had attempted to get FIR registered against the petitioner wherein he could not succeed. A complaint was filed accompanied with the application filed under Section 156(3) Cr.P.C. seeking directions to the police authorities to register the case on 21.09.2020 placed on record as Annexure P-13. The prayer made under Section 156(3) Cr.P.C. was declined by the Court on 28.09.2020 vide order which reads as under:-

“Arguments heard through Video Conferencing. After hearing the arguments, I do not find any ground to invoke power u/s 156 (3) Cr.PC. Thus, the present application is treated as complaint. It be registered. For recording preliminary evidence of complainant, the case is adjourned to 17.11.2020.”

8. He thus, submits that after the complainant moved representation to the police authorities on 23.09.2020, he preferred an application under Section 156(3) Cr.P.C. on 28.09.2020 before the Magistrate and the same was rejected. Yet he concealed the said fact while invoking inherent powers of this Court by way of petition filed under Section 482 Cr.P.C.

9. He further submits that by resorting to same *modus operandi*, another CRM-M-38976-2021 was filed by the petitioner w.r.t. alleged sale by impersonation w.r.t the third property. In that also, FIR came to be registered against the petitioner i.e. FIR No.12 dated 24.01.2022, for the offences punishable under Sections 420, 465, 467, 468, 471 and 120-B of IPC. In the said FIR, petitioner stands admitted to regular bail vide order dated 17.11.2022 passed by Coordinate Bench in CRM-M-44504-2022 (Annexure P-29). He submits that at the time the first bail application was preferred by the petitioner, the fact of the complainant having filed application under Section 156(3) Cr.P.C. and dismissal thereof was not in the knowledge of the petitioner and the same could not be placed on record before this Court.

10. He thus submits that the two facts that this Court must consider while considering second bail application preferred by the petitioner are:-

“(A) Concealment of the proceedings preferred by the complainant under Section 156(3) Cr.P.C. while invoking

jurisdiction of this Court under Section 482 Cr.P.C. which has resulted in the registration of FIR:

(B) The fact that the petitioner already stands admitted to bail in a connected FIR wherein he is facing similar allegations.”

11. Senior counsel further submits that the non-disclosure of the proceedings under Section 156(3) Cr.P.C. at the hands of the complainant while invoking jurisdiction of this Court under Section 482 Cr.P.C. has a material bearing on the facts of the present case. He submits that in fact the abuse of process of law at the hands of the complainant has resulted in a situation wherein an order passed by Court of competent jurisdiction refusing to register FIR against the petitioner has been undone by the act of the complainant. He thus submits that precisely this question arose before Uttarakhand High Court in ***Criminal Revision No.201 of 2013***, titled as ***Lt. Colonel (Retd.) Balraj Singh Lamba and another vs. State of Uttarakhand and another***”. While framing the question and answered in the same, the Court held as under:-

“xx xx xx

5. The questions that fall for determination in this revision are as to whether, an FIR could be lodged after rejection of an application under Section 156(3) of the Code? Secondly, if after rejection of an application under Section 156(3) of the Code, on the same allegations, an FIR is lodged and chargesheet filed, what would be its effect.

xx xx xx

15. In the instant case, an application under Section 156(3) of the Code, filed by the informant had already been rejected by the court of Magistrate on 10.07.2012. Investigation had been denied by the Magistrate on the ground that the application

under Section 156(3) of the Code had been filed with oblique motives.

16. Fact remains that the informant, after rejection of her application under Section 156(3) of the Code, filed the FIR in the instant case. The FIR is more or less in-verbatim to the application under Section 156(3) of the Code, except some changes made for making flow of the language. But the informant did conceal the fact in her FIR that her application under Section 156(3) of the Code had already been rejected. Has not it in effect, made the order of Magistrate did was, she nullified an order of Magistrate passed under Section 156(3) of the Code, by which investigation was denied.

xx xx xx

20. By concealing the order of rejection of her application under Section 156(3) of the Code, the informant got the FIR lodged. She filed the FIR. By doing so, she made the order of Magistrate dated 10.07/2012 redundant by deceitful means. It cannot be permitted to continue. The order of Magistrate of competent jurisdiction had been nullified in the case. Xx xx xx”

12. He thus submits that the concealment at the hands of the complainant is fatal to the case of the prosecution and the same cannot be ignored while considering the prayer of the petitioner for grant of bail.

13. Per contra, Mr. Batalvi submits that the conduct of the petitioner as is evident from perusal of GD No.042 dated 15.04.2022 placed on record alongwith written statement filed by the complainant as Annexure R-C/4 is enough to disentitle his claim for regular bail. However, Mr. Batalvi is not in a position that while invoking jurisdiction of this Court under Section 482 Cr.P.C. in CRM-M-29249-2021, the complainant did not

disclose the fact of dismissal of his prayer for registration of FIR against the petitioner under Section 156(3) Cr.P.C. Mr. Batalvi only submits that the petitioner, in his own wishful thinking was of the view that the same need not be disclosed as the same has no bearing on the present case.

14. State counsel while adopting the arguments raised by Mr. Batalvi submits that the allegations levelled against the petitioner are grave in nature and thus he does not deserve regular bail. At the same time, counsel is not in a position to dispute factual assertions w.r.t. presentation of report filed under Section 173(2) Cr.P.C. as made by the senior counsel representing the petitioner.

15. I have heard counsel for the parties and have gone through the records of the case.

16. Facts are not in much dispute. Admittedly, in the present case, civil suit filed by the complainant challenging the sale deed in question is also pending involving the issue, whether the said sale deed has been executed by the excutant thereof or not. The conduct of the complainant has come on record which *prima facie* shows that he did not disclose the fact of proceedings under Section 156(3) at his behest and dismissal thereof and also the fact w.r.t. the proceedings initiated before the Delhi Police wherein the scope of investigation included the present transaction and the precise allegation of impersonation levelled in the present FIR while invoking Section 482 Cr.P.C. Complainant is not in a position to dispute that the petitioner was one of the accused before Delhi Police and earned discharge. It is also not disputed that the police report under Section 173(2) Cr.P.C. already stands filed qua the petitioner. He stands admitted to regular bail by Coordinate Bench in another FIR involving similar allegations. The

evidence is in form of documents which are in possession of the investigating agency and there is no apprehension that the petitioner shall have an occasion to tamper the same. The petitioner is in custody since 15.04.2021.

17. Keeping in view the cumulative effect of all the aforesaid facts, present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

18. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

09.01.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No