IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-59013-2022
RESERVED ON: 19th JANUARY, 2023
PRONOUNCED ON: 24.02.2023

SUMIT KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

AND

RAMESH SANKA

…..PEITIONER

VERSUS

STATE OF HARYANA

…..RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sukant Gupta, Advocate
for the petitioner (in CRM-M-59013-2022).

Mr. Mansur Ali, Advocate and
Mr. Hemant Bassi, Advocate, Mr. Raj Kumar Singh, Advocate
Ms. Aashima Narula, Advocate and Mr. Imran A. Ali, Advocate
for the petitioner (in CRM-M-1135-2023).

Mr. Gagandeep Singh Chhina, AAG, Haryana.

Mr. Anil Mehta, Advocate with
Mr. Anirudh Sharma, Advocate and Mr. Rahul Gautam, Advocate
for the complainant.

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<u>SANDEEP MOUDGIL, J</u>

This order of mine will dispose of both the above titled petitions arising out of the FIR No.199, dated 21.07.2022, registered at Police Station Sector 65, Gurugram, whereby, the jurisdiction of this Court under Section 438

Cr.P.C., has been invoked seeking anticipatory bail in the offences under Sections 120-B and 389 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 418 and 420 IPC added later on).

2. The petitions are being disposed of by a common order since the question of law is identical i.e., whether non-issuance of notice under Section 41-A Cr.P.C., would be an illegality to vitiate the initiation of investigation and registration of FIR in the light of the fact that summons under Section 91 Cr.P.C., had been admittedly served upon the petitioners or it will merely be an irregularity.

3. Firstly Mr. Sukant Gupta, Advocate for the petitioner-Sumit Kumar (in CRM-M-59013-2022) has contended that the instant FIR has been lodged on a complaint by one authorized representative of IREO Residencies Company Pvt. Ltd., registered under the Company Act, 1966 dealing in the business of Real Estate. It is submitted on behalf of the petitioner that the allegation to assist the home-buyers and clients of complainant company and its sister concern to recover investment by misleading them and ''only for the purposes of extorting monies from the customer of the complainant-company" are without any cogent material and baseless. Mr. Gupta has laid much stress to the fact that the petitioner-Sumit Kumar is said to be working in connivance with Ramesh Sanka (former Chief Operating Officer of IREO Grace Realtech Limited) and another co-accused Vivek Sehgal as a partner in "Ghar Samadhan LLP" alleged to be a limited liability partnership set up on 15.01.2020.

4. Mr. Gupta has further argued that apart from the said allegation there is no role attributed in the FIR itself to suggest collusion of the petitioner with other accused persons except that he was acting at the behest and instructions of Ramesh Sanka. Mr. Gupta has further laid much stress to the issue that originally the FIR was lodged under Sections 389 and 120-B IPC but

only to make out a case of non-bailable offence, the investigating agency at the behest of complainant recorded statements of certain persons and added Sections 418 and 420 of IPC much later. He has drawn attention of this Court to the order impugned before this Court to urge that the benefit of anticipatory bail has been declined to the petitioner totally on wrong surmises and misreading of the fact attributing an audio recording to the petitioner wherein, somebody is asking of huge amount for withdrawal of false and frivolous FIR, which is actually alleged to co-accused Vivek Sehgal. The submissions were concluded on behalf of accused Sumit Kumar with a prayer to grant anticipatory bail highlighting that the FIR was registered on 21.07.2022 on a complaint dated 16.04.2022 and during this intervening period some of the investors/home-buyers approached the Courts and got orders to the disliking of the complainant-company which resulted into pressure upon the investigating agency to register the FIR despite the fact that no offence whatsoever could be said to have been committed as is evidence from the bare perusal of the FIR itself.

5. Now coming to the petition i.e. CRM-M-1135-2023 preferred by Ramesh Sanka, it has been asserted by Mr. Mansur Ali, Advocate for the petitioner-Ramesh Sanka that multiple complaints with the same set of allegations were made and after a detailed inquiry under the supervision of Commissioner of Police, Gurugram a closure report was prepared dated 14.09.2018. Learned counsel for the petitioner has put forth the case on behalf of the petitioner on the strength of demonstrating clean credentials of the accused petitioner submitting that he earlier worked as Chief Financial Officer (CFO) and Managing Director with DLF Limited from 2004 till 2014 and thereafter with the complainant-company IRE Pvt. Ltd. as Chief Executive Officer from 03.07.2014 till 28.06.2016 and left the job immediately on

coming to know about fraudulent and unlawful means adopted to usurp huge amount running into crores by the Vice-Chairman Mr. Lalit Goyal and the Managing Director and during this period he never accepted to be a signatory to any monetary transaction and even declined the offer of being a Director to any of the companies-sister concerns of IREO group.

6. Mr. Mansur Ali, learned Advocate further contended that in fact the petitioner being aware of malpractices of the complainant-company made various complaints and turned out to be a whistleblower against it highlighting the frauds, which created enmity and vengeance implicated the petitioner in the instant FIR as a counterblast to numerous complaints made by the petitioner and referred to the inquiry report dated 14.09.2018 whereby, it was concluded that the complaints against the petitioner are counter-blast by the complainant-IREO Pvt. Ltd. to save their own skin and *prima facie* no action is required to be taken. It has been vehemently contended on behalf of the petitioner that under un-due influence an FIR No. 0058, dated 30.03.2020 was got registered with the Police Station Sector 65, Gurugram under Sections 409 and 381 IPC (Annexure P-10), which has been challenged in this Court vide CRM-M-38556-2020, which is pending in motion hearing for 20.04.2023 and thereafter framing of charge has also been assailed vide CRM-M-53322-2022 wherein, notice of motion has been issued. Thereafter it is on a fresh complaint the petitioner was asked to attend the inquiry on 06.05.2022 vide e-mail dated 5.05.2022 (Annexure P-11) alleging that the petitioner has stolen used and handed over documents as well as data pertaining to the project of the complainant-company to its home-buyers. The counsel for the petitioner submits that the registration of fresh FIR is an abuse of process of law being used as a tool to harass bearing FIR No. 0199, dated 21.07.2022 (Annexure P-12). It has been further argued to seek anticipatory bail that the allegations in

the instant FIR are absolutely false having no iota of truth in it. Inasmuch as the petitioner has nothing to do with "Ghar Samadhan" though is helping the home-buyers in fighting against the malpractices fraudulent modes adopted by the builders which do not constitute any criminal liability.

7. Seeking relief of anticipatory bail, the arguments were folded with the urge that the allegations of stealing customers data are without any evidence and thus, even otherwise it should have been the subject matter of earlier FIR dated 30.03.2020 (Annexure P-10) and on that account the present FIR No. 0199, dated 21.07.2022 (Annexure P-12) has also been challenge vide CRM-M-37996-2022 wherein, after notice of motion the same is fixed for 20.04.2023. Further highlighting that certain orders detrimental to the complainant-company has also been passed by various State departments/institutions. The petitioner has also denied the allegation of stealing the customers data with the averment that he left the job with the complainant-company in December 2016 whereas the alleged data pertains to the period March 2017 to June 2017.

8. The common legal contention in both the petitions confines to violation of Section 41 Cr.P.C., alleging that no notice whatsoever was served upon the petitioners.

9. On the other hand, Mr. Anil Mehta, learned Advocate appearing on behalf of the complainant has opposed the prayer for grant of anticipatory bail to the petitioners alleging deep conspiracy at the hands of Ramesh Sanka and Sumit Kumar along-with other co-accused Vivek Sehgal who got registered a company in the name and style of "Ghar Samadhan LLP" contacted the home-buyers of the complainant-company after obtaining information/data from various sources filed numerous complaints dragging it into multifarious litigation including civil litigation. It is further submitted by

the learned counsel for the complainant that Ramesh Sanka worked under various IREO companies managing the products till 28.12.2016 and on that day at the time of resignation executed an Employee Separation Confidentiality, Inventions, Non-competition and Non-Disparagement agreement dated 28.12.2016 with IPL and the complainant-company. An amount of Rs.10,37,39,409/- was paid as severance fee wherein, the petitioners accused undertook to safeguard confidential information but started arm twisting for refund of amount paid against booking of two apartments in the Grand Hyatt Residencies Project. On refusal of the said amount by the complainant-company, the petitioners started contacting its home-buyers and initiated multiple false and frivolous litigation involving various sister concerns of IREO fund in India to extort monies illegally by causing wrongful loss and misrepresenting its record. It has been brought to the notice of this Court that the petitioners have not only misrepresented the clients of the complainant-company but also allured them stating that they can get the amount recovered which has been siphoned off by instituting litigations on their behalf through “Ghar Samadhan LLP” and in support thereof, there are various audio recordings wherein both the accused are asking for huge money for withdrawal of forged and frivolous complaints/FIR to the Director and employees of IREO Companies using its innocent home-buyers as a shield.

10. Having heard learned counsel for the respective parties.

11. It is an admitted fact on record that the petitioner Ramesh Sanka worked as CEO in the complainant-company managing its projects till the date of resignation i.e. 28.12.2016 and on that very day, he executed an Employee Separation Confidentiality, Inventions, Non-competition and Non-Disparagement agreement while receiving Rs.10,37,39,409/- as severance fee. The specific role attributed to Ramesh Sanka is regarding formation of a

limited liability partnership in the name of "Ghar Samahdhan LLP" on 15.01.2020 having registered office i.e. The Residential Premises of non-other than the petitioner Ramesh Sanka. He is the authorized signatory of the bank account of "Ghar Samadhan LLP", which is connected to his mobile number as well. There are e-mails from personal e-mail id of the petitioner from which vital information of the complainant-company has been shared with others resulting into violation of terms of the agreement dated 28.12.2016. Those e-mails sharing information though, contains confidential information or not, creates serious presumption against the petitioner Ramesh Sanka particularly in the firm stand taken by the complainant-company having audio recordings in its possession with regard to extorting money from its Directors and other employees for withdrawal of multiple complaints.

12. The investigating agency through learned State counsel has been categoric in its stand that both the petitioners have been making telephonic calls to the persons likely to depose against them and are not living any stone unturned to destroy material evidence. This Court cannot loose sight of the fact that the entire record pertaining to "Ghar Samadhan LLP" is in the possession of Ramesh Sanka and the co-accused Sumit Kumar, who is a partner in the said registered company who has entered into an agreement with numerous home-buyers. Learned State counsel has also referred before this Court from the record of investigating agency that notices under Section 91 Cr.P.C., were issued for production of records which are in possession of the petitioners but have not produced any record whatsoever deliberately and apart from that the zimnies recorded in the police file in the form of statements of various persons further indicate that the proposed witnesses are being threatened of dire consequences at the hands of petitioners.

13. The allegation against Sumit Kumar on perusal of FIR also

reflects that he has been actively connived with Ramesh Sanka in the commissioning of alleged offence who had been contacted the home-buyers of the complainant-company misleading them for getting money back, which was paid for booking of the plots to the projects launched by it on the pretext that the project has failed. At the one hand both the petitioners in connivance with each other alleged to have persuaded the clients of the complainant-company to institute cases through "Ghar Samadhan LLP" of which there are the partners and at the same time having duped not only those home-buyers are facing serios allegations of extorting money to the tune of Rs.10 Crores of the complainant-company making call to its Directors and other employees, which is in the possession of investigating agency now pending for forensic report.

14. There is no iota of doubt in the mind of this court that whatsoever may come out in the trial, *prima-facie* serious allegations involving huge financial transactions are in question which need to be treated differently as has been held by the Hon'ble Apex Court in "***Rohit Tondon vs. Directorate of Enforcement"; (2018) 11 SCC 46***, it is held that economic offenders have to be treated differently as a class apart. The relevant observation as made therein in para 21 are reproduced hereinbelow:-

> "*21. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed serious and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*"

15. The Hon'ble Apex Court in another case i.e. ***"Y.S. Jagan Mohan Reddy v. CBI" (2013) 7 SCC 439;*** has held as under:-

> "*34. Economic offences constitute a class apart and need to be visited with a different approach in the manner of bail. The economic offences having deep-rooted conspiracies and involving*

huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

16. Another co-accused involved in the commissioning of offence namely Vivek Sehgal is in judicial custody and has not been granted the concession of regular bail so far. The grave and serious nature of allegation including that of cheating and extorting money in conspiracy with each other by the petitioners is writ large on a plain reading of the FIR itself and as per the submissions of investigating agency. It is also to be borne in mind that the video recordings are awaiting forensic report for which voice samples are required and the investigation is at a nascent stage which is unable to proceed further until or unless the petitioners are taken into custody facing grave and serious allegations. The delay in the investigation due to non-cooperation of the petitioners will only benefit the accused alone due to its non-completion.

17. The submissions of the learned State counsel carries weight that as far as question of non-issuance of notice under Section 41-A Cr.P.C., is concerned, the notices under Section 91 Cr.P.C., were issued to both the petitioners but the same was never responded to despite due service upon them. It would be appetite to have a glance of both the provisions as envisaged in the Code of Criminal Procedure.

Section 41-A Cr.P.C., is reproduced hereinbelow:-

41A. Notice of appearance before police officer. *-- (1)[The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

Section 91 Cr.P.C., is reproduced hereinbelow:

91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

18. The intent of Legislation while incorporating Section 41-A

Cr.P.C., vide Act 5 of 2009 (w.e.f. 01.11.2010) is primarily to issue a notice where in all cases arrest of a person is not required under the provisions of sub-section (1) to appear before the concerned police officer. It further enshrines the duty upon the person to comply with the terms of said notice. If Section 91 Cr.P.C., is read solely for the production of things then it would not be in the right spirit as the bare language o same also requires attendance of the person alongwith the production of any document or other thing, which is deemed necessary or desirable for investigation, inquiry etc., before such officer.

19. In consonance with each other the intent is only to give prior intimation vide such notice may be under Section 41-A Cr.P.C., which seems to have been completed by issuance of notice under Section 91 Cr.P.C.

20. Be that as it may non issuance of notice under Section 41-A Cr.P.C., would not vitiate the initiation of investigation at this stage at all which can be only termed as an irregularity but not can illegality particularly when the summons to the petitioners have been admittedly served under Section 91-Cr.P.C., to attend and produce the material documents.

21. Apart from this the zimni orders on the files of the investigating agency are categoric in recording that the petitioners are even thereafter indulging in advancing threats to the proposed witnesses which warrants the custodial interrogation.

22. Although it may not be of much consequence but to keep the records straight reference is needed to mention here that in both the petitions the order dated 02.01.2023 though has been placed on record which has been examined by this Court but the same has not been put to challenge if prayer made in the petitions is taken technically into account.

23. In the light of above discussions and after clinical examination of the material before this Court, I am convinced that the Court below has rightly

declined the concession of anticipatory bail to the petitioners namely Sumit Kumar and Ramesh Sanka, vide its orders 09.12.2022 and 02.01.2023, respectively, as the same do not suffer from any illegality, infirmity and perversity.

24. Accordingly, both the petitions are ordered to be dismissed.

25. A copy of this order be placed on the file of the another connected petition.

26 However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

24th FEBRUARY, 2023

sham/poonam

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