

SHIV KUMAR AND ANR.

Versus

STATE OF HARYANA

.....Petitioners

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Kamal Kant, Advocate for the petitioners.
Mr. Chetan Sharma, DAG, Haryana.
Mr. Amit Chaudhary, Advocate for the complainant.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 438 CrPC, prayer has been made for grant of anticipatory bail to the petitioners in case FIR No.244 dated 04.05.2023 registered under Sections 120-B, 406 and 420 of IPC at P.S. City Fatehabad, District Fatehabad wherein, the petitioners have been implicated for playing fraud on the complainant, by having induced him to invest Rs.30,00,000/- on 28.07.2013 in “RK Palace and Complex Private Limited” (hereinafter referred to as ‘the Company’) against transfer of its shares. But, instead of doing the same they further cheated him by later inducing him to enter into a full payment agreement to sell dated 29.08.2017 regarding transfer of ground floor of 5 shops bearing Nos. 14, 15, 16, 17 and 18, situated within the Company, in favour of complainant, but instead having transferred the entire shares of the Company, in the name of his first cousin namely Ajay Jindal.

2. Learned counsel for the petitioners submits that the amount of Rs.53,00,000/- which was given by the complainant in total to the petitioners was merely a loan transaction to the Company and was

never meant for transfer of its shares in favour of complainant which was clearly discernible from the circumstances as no application in this regard was ever made by the complainant before the appropriate authorities. He further submits that had it been a case of fraud with the complainant, there was no occasion for not having proceeded against his real brother by the complainant who still remains shareholder of the aforesaid Company. He further submits that the loan was still outstanding towards the Company only and not individually against the petitioner. Learned counsel also submits that all the other accused who represent the Company at this stage being shareholders are on anticipatory bail and no custodial interrogation of the petitioner is required in the present facts and circumstance of the case.

3. On the other hand, prayer made herein has been vehemently opposed at the instance of learned State counsel assisted by learned counsel for the complainant while submitting that the plea taken by the petitioners as regards the transfer of his shares to Ajay Jindal is not made out from the documents available on record and is merely an eyewash to evade the liability in terms of cash received from the complainant as well as his obligations under the agreement to sell dated 29.08.2017 as the alleged transfer of shares by the petitioner is stated to be in favour of Ajay Jindal, who happens to be his real cousin (Chacha's son). Learned State counsel also points out that no document whatsoever besides any bank or cash transaction has been produced by the petitioners during investigation so as to even prima facie show the transfer of his shares of the Company to Ajay Jindal and

thus, the petitioners have been misusing the concession of interim protection granted by this Court.

4. I have heard learned counsel for the parties and gone through the paper-book.

5. The present is a case where apparently, the petitioner No.1 had dishonest and fraudulent intentions right from the beginning, having induced the complainant for investing money in the Company; later failed to transfer the shares in the name of the complainant; still further having assured the complainant of transferring 5 shops to him under an agreement to sell dated 29.08.2017 against full payment, instead thereof transferred only 1 shop whereas qua rights in the remaining alienated his shares in the company to his real cousin Ajay Jindal (Chacha's son) so as to deceive the complainant. Upon pointed and specific queries put to the learned counsel representing the petitioners, not even a single document or payment received or details about the payment towards the transfer of shares in the Company in favour of Ajay Jindal has been produced before this Court despite the matter been adjourned for the said purpose which prima facie establishes that the plea of transfer was prima facie part of the fraudulent intent of the petitioner No.1 so as to cheat the complainant particularly, defeating his rights under the full payment agreement to sell dated 29.08.2017 In such facts and circumstances, the custodial interrogation of petitioner No.1 was very much essential as any relief in the present petition would encourage his dishonest intent. Moreover, for the purposes of ensuring fair and impartial investigation, the petitioner No.1 is not entitled for the discretionary relief of anticipatory bail in the given facts.

6. In view of the aforesaid, I am unable to find any substance in the submissions made by learned counsel for the petitioners on behalf of petitioner No.1 and the present petition thus, stands dismissed qua petitioner No.1.

7. As regards petitioner No.2, he being son of petitioner No.1 merely happens to be a marginal witness to agreement to sell dated 29.08.2017 who has already joined investigation and as per learned State counsel, he is not required for any further investigation. Accordingly, the interim protection granted in favour of petitioner No.2 vide order dated 24.01.2024 is made absolute.

24.04.2024

(HARKESH MANUJA)
JUDGE

Tejwinder

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No