2024:PHHC:133189

103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34932-2024
DECIDED ON: 24.07.2024

D.C. GUPTA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. S.K. Sharma, Advocate
for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

*****

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No. 109, dated 19.03.2024, under Section 406, 420 and 120-B IPC, registered at Police Station Faridabad Central, Faridabad.

2. Facts

The present FIR has been registered on the basis of an application moved by one Yogesh Kathuria and Sandeep Kumar wherein, it is alleged that petitioner, Surender Pal Singh, Harinder Pal Singh and Dinesh Kasana had started the work of construction of Mall on a land owned by Surender Pal Singh and Harinder pal Singh opposite Bus Stand Palwal in the year 2008, one Ram and

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Shyam, who were property dealers were dealing in the sale and purchase of shops constructed therein. It was further alleged that the complainant met Ram and Shyam, who assured him that they would get him a good shop constructed at a reasonable price in the Mall and that the owners of the Mall had given them responsibility to sell the shops. Thereafter, Ram and Shyam allegedly introduced the complainant with petitioner, Surender Pal Singh, Harinder Pal Singh and Dinesh Kasana in September,2008, who also reiterated what Ram and Shyam has said and told that they would give good shop at reasonable price to them. The deal was alleged to have been finalized by Ram and Shyam for a sum of Rs.31,36,000/-. It was further agreed to pay the amount in five instalments of 20% each after a gap of 3 months. It was also agreed that the possession of the shop would be given at the time of payment of 5th and final instalment. The alleged accused had also assured that after booking they would complete 50% construction before the payment of next instalment. The Remaining 50% would be completed after the receipt of final payment and the possession will be given at the site along with the registry done. The complainant further stated that he paid the first instalment of Rs 6,00,000/- in Cash at the time of agreement dated 24/09/2008. The agreement was not given to him on that day but he was assured that the original agreement would be given in 2-3 days. It is further the case of complainant that the alleged accused persons with the intention of cheating them gave a colored photocopy of the agreement saying it as original agreement. The agreement was also not showing the full payment but mentioned about total 5 instalments of 20 % each. On being asked the accused persons told him that they had not mentioned the total price to avoid the income tax. They further told that he should not worry and that the construction of the shop would be completed in

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stipulated period and the price of the shop would be mentioned in the registry. It is the case of the complainant that when he went to pay the second instalment on24.12.2008 he saw that the construction work had not been done. On objection being raised the accused persons are said to have assured him that they would find the 75% of work at the time of next instalment. The complainant said to have then got suspicious, therefore, he did not give the 2nd instalment. On assurance given by the accused, the complainant gave 2nd instalment of Rs.6,00,000/- on 24.12.2008. Further, the 3rd instalment to the tune of Rs.3,00,000/- was paid to the accused persons on 24.03.2009. After a lapse of longtime, when he went to the site, he saw that the construction work of the Mall was completely stalled and when he asked them, then the accused persons explained him that the work was stalled as high tension electric wires were Crossing the Mall and the construction work would be completed as soon as the wire were removed. They also told him that the possession would be handed over and the balance amount would be received at the time of registry. The complainant became suspicious on the intentions of the accused and then told him that the construction work had not been completed as per promise even after lapse of longtime. He asked for return of their money and then the accused are alleged to have threatened him with false implication in cases if the complainant would put more pressure on them. They also assured that they will take the balance only at the time of registry and then the possession would be handed over. The complainant is alleged to have kept silent due to the threats. But when the work was not completed till 13.10.2014 then he sent a legal notice to petitioner, Surender Pal Singh, Harinder Pal Singh and Dinesh Kasana. But even then the complainant was neither handed over the possession of the shop nor registry was done as well as the money was also not

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returned. The complainants then said to have filed an application in Permanent Lok Adalat Palwal and the Hon'ble Permanent Lok Adalat is said to have issued arrest warrants against them as they deliberately avoided notices. It is then that the alleged accused are said to have appeared. It is also the case of the complainant that the alleged accused had also executed different agreements for sale of shops with one Sammi, Baldev Raj, Shyam Lal, Yogesh Kathuria, Sandeep Kumar and Sapna Verma also. They are alleged to have received the booking amount and instalments but had neither given the possession of the shop nor they got the registry done. These persons are also said to have filed their cases in Permanent Lok Adalat at Palwal. In all the cases, Surender Pal Singh and Harinder Pal Singh had appeared and taken the objection that the Lok Adalat had jurisdiction to entertain the cases was dismissed by the Hon'ble Permanent Lok Adalat. They thereafter had filed a petition against the order in this Hon'ble Court in which an order was passed on 28/11/2019 in the case of Sapna Verma where in the matter was transferred for hearing in the Permanent Lok Adalat, Faridabad. It is also stated that when the proceedings in Permanent Lok Adalat Faridabad started in the case of Sapna Verma an objection was taken by the aforementioned accused that the agreement was not original, therefore, the Permanent Lok Adalat Faridabad vide order dated 31/10/2022 refused to hear the case. The Hon'ble High Court vide dated 12/10/2022 had also remanded the cases of other purchasers to Permanent Lok Adalat, Faridabad for hearing. Thus, all the cases had been sent from Permanent Lok Adalat Palwal to Permanent Lok Adalat Faridabad. It is further the case of complainant that when his counsel examined - the original agreements given to all the purchasers then they came to know that the accused persons had hatched a criminal conspiracy in order to get undue

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financial gain and cause undue financial loss to the purchasers. It was also alleged that the alleged accused had usurped sum of Rs. 15,00,000/- from them and then had neither got the registry done nor had returned the amount. They had also given a colored photccopy of the agreement by telling them it to be original with intention to cheat and thus, had concealed the original agreement.

3. Submissions

On behalf of the petitioner:

It is submitted on behalf of the petitioner that there is no connection between the accused and the alleged agreement to sell. It is further submitted that the dispute involved in the instant FIR is civil in nature wherein criminal liability has been fastened upon the petitioner by way of instant FIR probably using it as an arm-twist mode. It is asserted that the petitioner is accused of being a partner in Crown Builders and Promoters but Crown Bharat Mall was to be exclusively constructed and developed by M/s BPS Developers Private Limited, a private limited company incorporated and registered under the Companies Act, 1956 on a piece of land owned by them. Initially M/s Crown Builders and Promoters was supposed to do marketing of the project "Crown Bharat Mall" but the petitioner neither actually did marketing nor received any sale consideration from the investors or M/s BPS Developers Private Limited for shop allotments. All the sale considerations, has been exclusively received by M/s BPS Developers Private Limited. The assertion is that no offence under Section 420 IPC has been made out against the petitioner as there is no allegation that the petitioner was, in any manner, involved in an act of instigating, inducing or alluring the complainant or any other person to give money. Further submission is that

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custodial interrogation of the petitioner is not necessary as nothing is to be required from him.

<u>On behalf of respondent-State and the complainant</u>

On the other hand, learned State Counsel submits that the investigation of the case is still pending and custodial investigation/interrogation of the petitioner would be required to culminate the investigation into a logical end as well as to recover the agreement to sell in question which the backbone of the dispute between the parties. The petitioner is not a person of clean antecedents, as he along-with other co-accused has cheated the four other innocent persons and FIR Nos. 106, 107 and 108, dated 19.03.20214 were also registered against them.

Heard learned counsel for the respective parties.

4. ***<u>Analysis and conclusion:</u>***

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

The Hon'ble Supreme Court in the case of ***<u>Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870</u>*** held that merely because custodial interrogation is not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

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> "*It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.*
>
> *Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.*
>
> *We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be*

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> *looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."*

More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in ***"State vs. Anil Sharma"; (1997) 7 SCC 187,*** held as under:-

> *"We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."*

As per the case of prosecution, the petitioner, a partner at Crown Builders and Promotors, is accused of wrongdoing related to an agreement to sell

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a property. The agreement, signed by the petitioner on behalf of Crown Builders, was between M/s B.P.S Developers (first party), the complainant (second party), and Crown Builders (third party/confirming party). It stipulated that petitioner's company and co-accused Surender Pal Singh's company would jointly develop and construct the property, sharing sale proceeds based on a mutually agreed-upon Memorandum of Understanding dated 19.09.2008. Serious allegations against the petitioner include colluding with co-accused Surender Pal Singh to create duplicate agreements, providing the complainant with a coloured copy while retaining the original. Additionally, they allegedly omitted the total consideration amount and land rate from the coloured copy. A comparison of the notarized agreement filed by the co-accused Surender Pal Singh with the Permanent Lok Adalat and the coloured copy given to the complainant reveals these discrepancies.

Even though the petitioner joined the investigation pursuant to interim bail granted by the trial Court, he neglected to turn over the original agreement to sell in question, which forms the basis of parties' dispute, which is sufficient for this Court to infer that the petitioner has not cooperated with the investigation, which might lead to further complications. Hence, in order to retrieve the original sale agreement, the petitioner must be questioned while in custody.

Moreover, the antecedents of the petitioner are also not good, as he is already involved in various other cases of similar nature, wherein though in two FIRs he stands acquitted and in one FIR he was granted anticipatory bail and in present FIR he was declared innocent and was placed in column No.2 but this Court is not inclined to let the petitioner out on anticipatory bail as on earlier

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occasion he was granted anticipatory bail by the Co-ordinate Bench and after that also he has not mended his ways and he is again indulging himself in the illegal activities. The Apex Court in case "***Gudikanti Narasimhulu vs. Public Prosecutor, High Court of A.P"; (1978) 1 SCC 240***, has already observed that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Keeping in view the afore-said facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby, dismissed.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

(SANDEEP MOUDGIL)
24.07.2024 **JUDGE**
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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