

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37340-2024
Decided on 05.08.2024

Nitin Khetan ... Petitioner

VS.

State of Punjab ... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RS Rai, Sr.Advocate with
Mr. Jatinder K Sharma, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Mr. Ashutosh Gupta, Advocate for the complainant

Sandeep Moudgil, J.

Relief Sought

(1). This petition under Section 482 read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed by the petitioner seeking pre-arrest bail in case FIR No.510 dated 24.12.2023 (Annexure P1) under Sections 406/420/465/467/468/471/120-B IPC registered at Police Station Sohana, District SAS Nagar.

(2). The prosecution story as narrated in the FIR is reproduced as under:-

“The Additional Chief Administration, GMADA, Room no. 226, PUDA Bhawan, Sector 62 Mohali, SAS Nagar 160062, Subject: Cancellation of CLU obtained by Nitin Khetan (for Funex Infra Pvt Ltd.) who mislead your office using forged documents of Rajmohan Kaur (Trust) - Kindly scrutinize documents of CLU (vide letter no: 2095 DTP SAS Nagar dated 03.11.2022) on urgent basis. Respected Sir, Since past one month have been running pillar to post, visiting various offices

of GMADA and facing total non-cooperation from various GMADA offices located at PUDA Bhawan, Sector 62, Mohali (SAS Nagar). A short while ago, on my regular visits to my land located at village Kailon, Mohali, having khata no. 14/14, 119/144, khasra no. 38//2 (8-0), 3(8-0), 8(1-15), 10(7-16), 36//19/1 (2-2), 23(8-0), 22(8-0), 38//9(4-4), 38//11(2-0), 39//15/2(2-17), measuring 49 Kanal 9 Marla owner Rajmohan Kaur, The Anabhau Foundation Charitable trust, I saw a labourer holding map of "Khetan English County" Project Map and pamphlet showing CLU (vide letter no: 2095 DTP SAS Nagar dated 03.11.2022) at Sirhind-Chunni Road near our land. When I inspected the map, it was showing our land as part of "Khetan English County" Township project by Funex Infra Private Limited which had plots, parks and roads. Upon asking the labourer who gave them permission to show our land as part of their project he ran away. Since then I have been visiting various offices of yours but no one has answered my queries for reasons best known to them. I never gave any permission to anyone to include my land in their project. It seems Nitin Khetan for Funex Infra Private Limited / Khetan Realty has obtained CLU for their project using forged documents in your office. Kindly provide to me a copy of such documents so I can initiate suitable action as per law. If still no action is taken by your office, then I will have no other option but to go to Police Officials, Punjab Vigilance Bureau and the Hon'ble Court against you as it is my suspicion that Nitin Khetan carried out this fraud using forged documents and GMADA issued the CLU without verifying the owner (Rajmohan Kaur, Trust) of the land, neither did you verify the persons whose consent letters was used, nor any official of your office informed the owner (Rajmohan Kaur, Trust) about it. I hope you will take my final request into consideration and take prompt action. Any delay in action by you can cause massive damage to my rights and it my

humble prayer to you to please do not waste one more second and handle my request on a priority basis. look forward to hearing from you and request you to send all communication my mobile no. 9569999556 through call / Whatsapp and email es.ekjotsingh@gmail.com. I will only accept communication/notice/queries sent at the above listed by your office as it will allow me to communicate...”

SUBMISSIONS:**On behalf of the petitioner**

(3). Learned counsel for the petitioner has contended that the petitioner is running a business of real estate builder and the allegation against him is that he obtained the Change of Land Use (CLU) from Greater Mohali Area Development Authority (GMADA) for the Real Estate Project comprising the land of the complainant and on that account fraud, forgery and cheating has been allegedly committed against the complainant.

(4). It is the submission made on behalf of the petitioner that the petitioner has been falsely implicated only because it was the company of the petitioner who took over the project after paying the sale consideration and the permissions already granted by the GMADA to predecessor of the petitioner i.e. RKM Housing P.Ltd. were subsequently transferred in the name of the petitioner's company and as such, the petitioner has no role to play in the grant of original permissions in the name of RKM Housing P.Ltd. He further averred that it was only after obtaining the CLU from GMADA and when RKM Housing P.Ltd. could not complete the terms and conditions of MOU entered between RKM Housing P.Ltd. and Sherwood Officer Society, the company of the petitioner took over the project from Sherwood

Society and further purchased 71 kanal 4.44 marlas and 2 Sarsai of land for development of its own project.

(5). Learned senior counsel laid vehemence to his argument to contend that the petitioner entered into an agreement to sell for purchase of 49 kanal 13 marlas of land owned by the Anabhau Foundation Charitable Trust and paid the part payment of the sale consideration and except the above mentioned land, the Trust has no concern with the other land which belongs to Sherwood Officers Society or the land owners and CLU qua the above mentioned land as issued by GMADA could not have been challenged in the complaint on the basis of which inquiry was conducted and subsequently FIR was lodged.

On behalf of the respondents

(6). Notice of motion.

(7). On the asking of the Court, Mr. Rajiv Verma, DAG, Punjab, accepts notice. Mr. Ashutosh Gupta, Advocate has filed power of attorney on behalf of the complainant which is taken on record. They are in unison to oppose the prayer made on behalf of the petitioner for grant of pre-arrest bail to him on the ground that the petitioner along with co-accused persons has forged the documents and committed fraud with the complainant. The Trust being a family Trust makes it unbelievable as claimed by the petitioner that there will be no Trustee from the said family, which was there earlier and as such, a big fraud has been committed by them and the Trust deed, which was in existence creating the Trust, has been superseded by allegedly involving the persons outside the family of the Trust and by forging the documents.

(8). It is argued that it is highly unbelievable that the trustees of the Trust, who are all family members will sell or transfer their land without getting any consideration and there is no proof of any consideration being transferred to the original trustees or any of their family members inasmuch as the documents of the Trust and their resignation letters have been forged.

(9). Another argument raised on behalf of the complainant is that the family members remained trustees for almost 19 years and suddenly resign and total strangers to the family are appointed as trustees of the Trust whereas the original trustees did not pay any amount for the land which they purchased 19 years back. He further averred that the Power of Attorney executed by Rajmohan Kaur is not a forged document. In fact the petitioner has obtained the CLU on the basis of a forged consent letter purported to be given by the complainant. He referred to Annexure P5 i.e. agreement to sell dated 19.09.2021 entered into between Jasbir Singh – nominee of Anabhau Foundation Charitable Trust with the petitioner who is the developer of Khetan English County project to submit that when the land was already sold, how is it possible that the letter of consent dated 23.12.2021 for the purpose of transfer of CLU was provide to the company of the petitioner.

Analysis

(10). It is the allegation against the petitioner that the Additional Chief Administrator, GMADA had conducted inquiry on the complaint filed by Ekjot Singh on behalf of Anabhau foundation Charitable Trust through Raj Mohan Kaur. The complaint was filed against M/s Funex Infra Pvt. Ltd. and Nitin Khaitan (the petitioner) for getting CLU dated 03.11.2022 on the basis of forged documents. The Additional Chief Administrator conducted the

detailed inquiry and found that Anabhau Foundation Charitable Trust was created on 14.01.2002 with Raj Mohan Kaur as Chief Patron and other family members as trustees. The Trust purchased land measuring 49 Kanal 9 Marla vide sale deed 16.01.2022. A forged letter was prepared on 28.04.2016 regarding the consent of Raj Mohan Kaur in favour of RKM Housing Private. RKM Housing sold land to Funex Infra vide sale deed dated 20.09.2021 and thereafter, the resignation of Raj Mohan Kaur and Gagandeep Kaur from Anabhau Foundation Charitable Trust was forged on 13.05.2021. Thereafter, on 08.12.2021, a resolution of Anabhau Foundation Charitable Trust was passed by showing Neha Dhaliwal as Chief Patron and Lakhvir Singh etc. as trustee. Lakhvir Singh executed letter of consent fraudulently on behalf of Anabhau Foundation Charitable Trust in favour of Funex Infra Pvt. Ltd. on 23.12.2023. Funex Infra moved an application for transfer of CLU from RKM Private to Funex Infra. Thereafter, Khaitan English County announced selling of residential plot in Sector-113, Mohali including the land of Trust. It was found that RKM Housing which is owned by Kanwaljeet Singh was having lesser land and it needed more land for getting CLU and as such, consent letter of Raj Mohan Kaur was allegedly forged by RKM Housing in the year 2016 and CLU was obtained in the name of RKM Housing.

(11). Thereafter, original trustees were shown to have resigned by forging document and Neha Dhaliwal became Chief Patron and Lakhvir Singh etc. became trustees without the consent of original trustees and they fraudulently got the CLU transferred in favour of Funex Infra Ltd. Indeed, the complainant came to know about the fraud only when project of Khaitan Housing was launched and they found that land of Trust was included in the

project, and as a result, they made an inquiry. The copy of letter of consent allegedly issued by Raj Mohan Kaur which has been attested on 28.04.2016 was on the file and it is stated that the signature of Raj Mohan on this document has been found to be forged as against the assertion made by the respondents that during inquiry that one Amandeep Singh was Chief Patron of Trust and Rajmohan Kaur etc. had resigned in May, 2021.

(12). As can be seen that while obtaining CLU in the year 2016, RKM Housing P.Ltd. produced the consent letter containing forged signature of Raj Mohan Kaur. Whether or not the petitioner had any role to play in obtaining the CLU issued in the name of RKM Housing P.Ltd. is yet to be ascertained and even if it is assumed that if any forgery was done in getting the CLU, even then the petitioner cannot be held liable.

(13). Surprisingly, if any forgery was done in getting the CLU, it is not understandable as to why Raj Mohan Kaur, alleging herself to be chief patron of the Trust, kept mum till 2023 and no objection was raised at the time when public notice was issued by the GMADA at the time of issuance and/or transfer of CLU to RKM Housing P.Ltd.

(14). As regards the resolution dated 15.06.2021 relied upon by the complainant, it cannot be said that vide the said resolution any trustee have resigned or any new members were inducted as new trustees. Moreover, the said resolution was never challenged.

Order

(15). Be that as it may, looking into the totality of the facts, this Court is conveniently of the view that a dispute has arisen out of Real Estate Business between the petitioner and the complainant and the allegation with

regard to the forged and fabricated can be tested and examined by leading evidence at an appropriate stage during the course of investigation, thus, the custodial interrogation of the petitioner is not required.

(16). In view of the discussions made hereinabove, the present petition is disposed of, with a direction to the petitioner to join the investigation within a period of one week from today. In the event of arrest, the petitioner be released on anticipatory bail subject to his furnishing personal bond/surety bond to the satisfaction of Investigating Officer/Arresting Officer. The petitioner shall also join the investigation as and when called upon to do so by the Investigating Agency and he shall also abide by the conditions, as envisaged under Section 438 (2) Cr.P.C. in letter and spirit.

(17). Ordered accordingly.

(18). However, it is made clear that in case the petitioner fails to join the investigation within a stipulated period, respondent-State would be at liberty to move an appropriate application for recalling of this order.

05.08.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No