211

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38309-2024
Decided on : 03.12.2024

Rupesh Yadav

. . . Petitioner

Versus

State of Haryana

. . . Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present : Mr. Ashok Sheoran, Advocate
for the petitioner

Mr. Gaurav Bansal, DAG Haryana

****

KIRTI SINGH, J. (Oral)

1. Apprehending arrest in FIR No.345 dated 16.07.2024, under Sections 406 and 420 IPC registered at Police Station Badshahpur, District Gurugram, Haryana, the petitioner has preferred this petition under Section 482 Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of anticipatory bail.

2. The contents of the above-mentioned FIR are reproduced herein below :-

> *"To, the Station House Officer Police Station: Badshahpur, Gurugram, Haryana Subject: Complaint for registration of FIR under Sections 420, 419, 417, 467, 406, 506 and 120-B of IPC, against Amit Yadav and Rupesh Yadav.*
> *1. Rupesh yadav S/o Sh. Sather Singh Yadav R/o Village Tekli, Sub-tehsil Badshahpur Gurugram, Haryana 2. Amit Yadav S/o Sh. Raj Kumar R/o Village Ghasola, Tehsil - Gurugram, Haryana for committing criminal breach of trust, fraud, cheating, forgery, and*

impersonation, against the complainant. Sir, that the present complaint is being filed by Smt. Sunil W/o Sh. Pawan Kumar S/o Sh. Ram Kumar both R/o H.No. 168, Village Teekli District Gurugram, Haryana. That brief factual matrix giving rise to file the present complaint is stated herein below. that the accused persons are real estate agents/broker/dealer running their office in Gurugram, Haryana that the accused No. 1 is the classmate of the complainant and both come from the same village.

2 That, the complainant was searching for some flats/apartments, while the on-going search, the complainant met the accused No. 1. the accused with ill intentions induced and deceitfully allured the complainant to buy EWS/BPL flat No. W 111 on first floor, Block W, having its covered area 18.58 sq. mtrs (200 sq. ft.), in the residential colony known as EWS Block Park view City 2, Sector 49, in and around village badshahpur, Sub-Tehsil: Badshahpur Gurugram, Haryana and EWS/BPL Flat No. W 112 on First Floor, Block W having its covered arce 18.58 Sq Mtrs (200 Sq. ft), in the residential colony known as EWS Block, Park View City 2, Sector 49, in and around village, Badshahpur, Sub-Tehsil, Badshahpur, Gurugram, Haryana

3. That the accused No. 1 stated to the complainant that he knows the owner of the above-mentioned property and further stated that the accused No. 1 will get the deal matured. That the accused No. 1 further stated that the accused No. 2 is the owner of the above stated property and both the accused persons went under a conspiracy to cheat the complainant

4. That, upon above said deceitful representation and assurance, the accused persons succeeded their ill design of tempting the complainant to fall in their honey trap and fraudulently induced the complainant and entered into two agreements to sell, both dated 25.11.2023, by impersonating the owner, with themselves i.e, the accused persons. the copy of said both the agreements to sell, both dated 25.11.2023 are attached herewith for the kind reference as

Annexure-A, Annexure-B.

5. That the accused persons No. 1 stated to the complainant that the accused No. 2 is the owner and possession of the above stated property that the accused No. 1 also stated the complainant to transfer the Rs. 3,20,000/- (Rupees Three Lacs and Twenty Thousand only) to accused No. 2. then accordingly the complainant on various dates through UPI dated 24.11.2023 transferred Rs. 1.00.000/- (Rupees one lacs only), transferred Rs. 1,00,000/- (Rupees one lacs only) dated 25.11.2023, transferred Rs. 1,00,000/- (Rupees one lacs only) dated 26.11.2023 and transferred Rs. 20,000/- (Rupees twenty thousand only) dated 26.11.2023 to Mr. Amit yadav (accused No. 2). The copy of said payments made has been annexed herewith for the kind reference as Annexure-C.

6. That, thereafter the accused persons said to the complainant that the sale deed will be executed in the next month and at that time accused No. 1 also stated to the complainant that he will arrange loan facility from the bank and all formality will be done by him, thereafter avoided the execution of sale deed on one pretext to another to the reasons best known to them. later, it came in to the knowledge of the complainant that the accused No. 2 is not the owner of the property, but the business partner of the accused No. 1. it is pertinent to mention here that the accused person forged the signature of the original/actual owner do not have any knowledge about the same. that the accused persons also forged the signature, agreement and other documents and submitted in the bank,

7. It is pertinent to mention here that the complainant had made all the payments when demanded by the accused, on time as and when the accused persons asked for the payment. That the accused person had cheated the complainant and used the hard-earned money of the complainant from last so many months.

8. That that the main rationale of the accused persons behind this was that the accused persons want to sell the above said unit at a higher rate to some other buyer, as the price paid by the complainant was *low as compared to prices of the units in that area as of today, committing a gross misconduct of non compliance of the rule is nothing short of criminal.*

9. That the accused persons simply duped the complainant of his hard-earned money and life savings. the aforesaid arbitrary and unlawful acts on the part of accused persons have resulted in extreme kind of financial hardship, mental distress, pain, and agony to the complainant.

10. That, the behavior and conduct of the accused persons in whole contract has been unprofessional, irresponsible, and unethical due to which the complainant suffered not only financial loss but also mental agony, man hour, time, and opportunity cost losses. the complainant feels cheated by the accused persons

11. That, the accused persons have deceitfully induced the complainant to buy the above- mentioned property upon false representation of the owner, the accused persons fraudulently and deceitfully induced the complainant to purchase the said units. later, with their malafide intention of grabbing the money of the complainant, the accused persons misappropriated the above said money and violated the terms and condition of the agreement causing wrongful loss to the complainants and wrongful gain to themselves.

12 That, it is pertinent to mention here that despite having knowledge of wrongful acts and being completely wrong, the accused is now threatening complainant of dire consequences. thus, in this way the accused persons committed offence under Sections 420, 419, 417, 467, 406, 506 and 120-B of IPC.

It is therefore the applicant humbly prays that the above application be investigated, and all the evidence be recorded and a regular fir under Sections 420, 419, 417, 467, 406, 506 and 120-B of IPC be registered, accused be arrested, and the accused be punished as per the law. All necessary documents are attached with the application. dated: 16.03.2024, complainant Smt. Sunil W/o Sh. Pawan Kumar."

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case and not a single penny was transferred into his account and nothing is to be recovered from the petitioner. The petitioner is a property dealer and has no criminal antecedents. He further submits that the allegations of impersonating and inducing as per the case of complaint are entirely false and the petitioner is willing to join the investigation.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He submits that during the course of investigation it was disclosed that a sum of Rs. 3.2 lacs was transferred in the bank account of one Amit Yadav, who further transferred this sum to the present petitioner. During interrogation the petitioner admitted to have received this sum and he stated that he would get this sum recovered, however, he later refused and stated that out of this amount he transferred a sum of Rs. 50,000/- to one Savita and Savita got recovered this sum. The petitioner represented the co-accused Amit as the owner of the flats and fraudulently received a sum of Rs. 3.2 lacs in his account by duping the complainant. Co-accused Amit is still on run and he is yet to be associated with investigation of this case. Thus, in view of the serious allegations the petitioner does not deserve the concession of anticipatory bail.

5. Heard the rival submissions made by learned counsel for the parties and perused the record.

6. In ***Srikant Upadhyay and others vs. State of Bihar and another, 2024 (INSC) 202 (SC),*** Hon'ble Supreme Court held as under:

> *"It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it*

should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J.Mannan & Anr. 2010 (1) SCC 679).

*Further, it was clearly observed in para NO. 24 of the judgment (supra) that "**though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule.** It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant."*

7. In ***Sushila Aggarwal v. State (NCT of Delhi) (2018) 7 SCC 731***, the

Constitution Bench reaffirmed that when considering applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

8. In ***Siddharam Satlingappa Mhetra v. State of Maharashtra & Ors. reported in (2011) 1 SCC 694*** rendered in the context of the discretion to grant Anticipatory Bail under Section 438, Hon'ble Supreme Court advocated the need to balance individual personal liberty with societal interest and observed:-

> *"84. Just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important."*

9. Vide order 20.11.2024, on request of the parties, this Court referred the parties before Mediation and Conciliation Centre of this Court. Pursuant to this, mediation report dated 26.11.2024 has been received by this Court, as per which the parties have failed to settled the dispute.

10. There are serious allegations levelled against the petitioner that the petitioner was actively involved in this offence and there are allegations of impersonation and that he received Rs. 3,20,000/- in his account through co-accused Amit. Accordingly, to unearth the true dimension of the alleged crime, this Court does not deem it appropriate to interfere in the matter so as to grant the concession of anticipatory bail to the petitioner at this stage.

11. The petition is dismissed.

12. Needless to mention that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

13. Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

December 03, 2024
reena

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