
(2015) 01 P&H CK 0327

In the Punjab And Haryana At Chandigarh

Case No : CRM-M-No. 32670 of 2014 (O&M)

Iqbal Singh Sabharwal and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 82
Penal Code, 1860 (IPC) — Section 120-B, 406, 420, 466, 467

Citation : (2015) ALLMR(Cri) 369 : (2015) 3 RCR(Criminal) 274

Hon'ble Judges : Naresh Kumar Sanghi, J

Bench : Single Bench

Advocate : P.S. Hundal, Senior Advocate and Dinesh Trehan, for the Appellant;
Shilesh Gupta, Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Naresh Kumar Sanghi, J—Prayer in this petition filed under Section 438, Cr.P.C., is for grant of anticipatory bail to the petitioners Iqbal Singh Sabharwal and Harpreet Walia Sabharwal, who have been booked for having committed the offences punishable under Sections 120-B, 406, 420, 467, 468 and 471, IPC, in a case arising out of FIR No. 239, dated 17.07.2007, registered at Police Station, Kharar, District SAS Nagar, Mohali. Mr. P.S. Hundal and Mr. D.S. Bali, learned senior Advocates, representing petitioner Nos. 1 and 2, respectively, contend that a case of civil in nature has been given the colour of a criminal case; after thorough investigation, the Investigating Agency had concluded that no case for initiating proceedings against the petitioners was made out and, as such, the cancellation report was submitted before the learned Area Judicial Magistrate, who, without issuing notice to the complainant, took cognizance and declared the petitioners as proclaimed offenders; earlier petition bearing CRM-M-31573-2012, seeking the same relief was dismissed as withdrawn on 06.12.2013 since the complainant had assured the petitioners to effect a compromise and withdraw the complaint presented before the police; the petitioners were never served with the summons or bailable or non-bailable warrants prior to declaring them as

proclaimed offenders and that the petitioners are not required for interrogation and, as such, the prayer for grant of anticipatory bail be accepted.

2. On the other hand, Mr. Shilesh Gupta, learned Additional Advocate General, Punjab, assisted by Mr. Hemant Saini, learned counsel for the complainant, has vehemently opposed the grant of anticipatory bail to the petitioners and submitted that initially the Deputy Superintendent of Police had proposed to submit the cancellation report, but the Senior Superintendent of Police disagreed with the said report and a Special Investigation Team was constituted and that too approved the report of the Deputy Superintendent of Police but later on at the instance of Director General of Police, Punjab, the matter was further investigated and it was found that the petitioners had intentionally concealed from the complainant the fact that the land in question was not mutated in their names nor the said land was duly partitioned as was claimed by them (petitioners) in Memorandum of Understanding, dated 21.04.2006, and the deed of confirmation, dated 09.09.2006. It was further concluded that on 21.11.2006, the petitioners presented an application before the Chief Town Planner, Punjab, for grant of Change of Land Use. Certain documents were annexed with the said application. The particulars disclosed in the application and the documents annexed therewith did not match with the actual record. Since the land in question was not mutated in the name of MPS Multiplex Company belonging to the petitioners and, as such, disagreeing with the earlier reports furnished by the Police Officers, the newly constituted Special Investigation Team directed that the charge-sheet be presented for the prosecution of the petitioners for the offence punishable under Section 420, IPC, only. The complainant filed a petition bearing CRM-M-35913-2012 before this Court alleging that the charge-sheet was not filed for relevant provisions of forgery etc. The said petition was disposed of by this Court with a direction to the Senior Superintendent of Police to look into the grievance of the complainant. The Senior Superintendent of Police sought the legal opinion and thereafter the Investigating Agency presented the supplementary charge-sheet for the prosecution of the petitioners for the offences punishable under Sections 120-B, 406, 466, 467 and 471, IPC. The learned Magistrate issued the process for summoning of the petitioners. In the meantime, the petitioners, once again, moved an application before the police and the Investigating Agency filed the supplementary cancellation report. The learned Area Judicial Magistrate disagreeing with the supplementary charge-sheet filed by the Investigating Agency proposed to proceed with the earlier charge-sheet presented by the Investigating Agency. Since the petitioners had failed to appear before the learned Area Judicial Magistrate, therefore, after exhausting the procedure for procuring their presence, the proceedings under Section 82, Cr.P.C., were initiated and after following due procedure, the petitioners were declared as proclaimed offenders. Instead of appearing before the learned trial Court, the petitioners challenged the order, dated 03.07.2014, before the learned Additional Sessions Judge by way of a criminal revision petition and the same was dismissed by a detailed order, dated 20.08.2014. They

further submitted that from the very beginning the petitioners had a mala fide intention to commit cheating with the complainant and by presenting the forged documents and giving wrong assurance induced the complainant to part with an amount of Rs. 25 crores. It was also submitted that after decision of the first petition seeking anticipatory bail, no new ground is made out and, as such, the present petition seeking the same relief is not maintainable.

3. I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

4. As per the material available on record, the petitioners had entered into an agreement with complainant Sukaran Kumar Jain for selling their land measuring 55 kanals 03 marlas for a total consideration of Rs. 112.50 crores and executed Memorandum of Understanding, dated 21.04.2006, and the deed of confirmation, dated 09.09.2006, in that regard. It was disclosed by the petitioners that they were the absolute owners of the land in dispute, which was duly partitioned. The complainant paid a sum of Rs. 25 crores to the petitioners as earnest money. Later on the complainant learnt that the petitioners were neither absolute owners nor the land in dispute was partitioned. The petitioners had intentionally misrepresented the facts to the complainant so that by their fraudulent intention he (complainant) could part with the hefty amount. After knowing that the petitioners had committed fraud and cheating with him (complainant), he reported the matter to the police. After registration of the FIR, the matter was investigated, reinvestigated, further investigated at different levels. The Investigating Agency filed the charge-sheet for prosecution of the petitioners for the offence punishable under Section 420, IPC. The complainant was not satisfied with the said charge-sheet and, as such, he filed a petition before this Court for issuing a direction to the Investigating Agency for presenting a proper charge-sheet for prosecution of the petitioners for committing forgery etc. as well. The said petition was disposed of with a direction to the Senior Superintendent of Police to look into the grievance of the complainant. The Senior Superintendent of Police directed for further investigation and, as such, the supplementary charge-sheet for prosecution of the petitioners for the offences punishable under Sections 120-B, 406, 466, 467 and 471, IPC, was presented. The process for summoning of the petitioners had already been initiated by the learned Area Judicial Magistrate. After knowing the fact that the supplementary charge-sheet was also filed by the Investigating Agency for prosecution of the petitioners for additional offences, the petitioners presented an application before the senior officials of the Police and a cancellation report was also presented before the Area Judicial Magistrate. The said report was not accepted by the learned Area Judicial Magistrate and he continued with the process of summoning of the petitioners. When the petitioners failed to appear before the learned trial Court, the coercive methods were adopted and ultimately by initiating the proceedings under Section 82, Cr.P.C., the petitioners were declared as proclaimed offenders.

5. Concededly, it is a second petition for grant of anticipatory bail. The learned senior Advocates representing the petitioners were requested to narrate the new grounds on which the present petition could be accepted. Both the learned senior Advocates reiterated that from the facts, no case of cheating or forgery was made out and the Investigating Agency had finally concluded that there was no substance in the complaint. When repeatedly confronted with the fact that these two grounds were already available to the petitioners when the earlier petition for grant of anticipatory bail was dismissed as withdrawn in the month of December 2013, no plausible explanation was advanced. Hence, this Court is of the opinion that by deliberate concealment of the material facts and narration of the wrong facts to the complainant, petitioners induced the complainant to part with the hefty amount of Rs. 25 crores, therefore, prima facie case for proceeding against the petitioners is made out. They have also been declared as proclaimed offenders. It is the settled law that the Courts should be slow in showing indulgence to the proclaimed offenders.

6. In Lavesb Vs. State (NCT of Delhi), (2013) 115 CLT 354 : (2012) 4 JCC 2330 : (2012) 8 JT 336 : (2012) 8 SCALE 303 : (2012) 8 SCC 730 and State of Madhya Pradesh Vs. Pradeep Sharma, (2014) 1 AD 382 : AIR 2014 SC 626 : (2014) 1 CCR 13 : (2014) 1 Crimes 70 : (2013) 15 JT 366 : (2014) 1 RCR(Criminal) 269 : (2013) 14 SCALE 626 : (2014) 2 SCC 171 : (2014) 3 SCJ 260 , Hon"ble the Supreme Court held that if any one is declared as absconder/proclaimed offender in terms of Section 82, Cr.P.C., he is not entitled to the relief of anticipatory bail. Keeping in view the totality of the facts and circumstances of the case, this Court does not deem it to be a fit case to grant anticipatory bail to the petitioners and, as such, the petition is dismissed.

Whatever has been observed above is for the limited purpose of deciding the present petition.