

(2018) 12 J&K CK 0096

In the Jammu And Kashmir High Court

Case No : Bail Application (B.A) No. 207 Of 2018, Miscellaneous Criminal Cases (CRMC) No. 764 Of 2018, IA No. 1 Of 2018

Sandeep Gulhati And Anr @APPELLANT@Hash State Of Jammu & Kashmir ?Through Crime Branch Jammu

Date of Decision : 31-12-2018

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 420

Citation : (2018) 12 J&K CK 0096

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Sunil Sethi, Parnav Kohli, Ankesh Chandel, Rajnesh Oswal, P.N.Raina, Y. E.Tak, J.A.Hamal, Rajat Gupta

Final Decision : Dismissed

Judgement

BA No.207/2018

1. The petitioners, who have been arrested in FIR No.36/2018 registered with Crime Branch, Police Station, Jammu under Section 420, 120-B RPC, have filed the present application for grant of bail on the ground that they are the citizens of India and the permanent residents of the State and are under custody of Crime Branch since long; that a false and frivolous case has been registered by C/ B against them at the behest of complainant. That civil dispute has been converted into criminal proceedings. That petitioners have been arrested since long and if not released, it will amount to punishment before trial. The case of the applicants/petitioners is that the applicants have numerous business concerns running in the State such as M/s National Garage in Jammu and Srinagar and having dealership of Tata Motors etc; that the applicants had entered into a Memorandum of Understanding (hereinafter referred to as (MOU) with one Navneet Mahajan, and his late father Mr. D. K. Mahajan for development of land measuring 29 kanals situated at Gangyal, Jammu, owned and possessed by them; that the complainant expressed his inability to arrange the entire amount on which the MOU's were agreed upon and entered between

the parties, which ultimately led to the frustration/delay in the contract; that in order to arm twist the applicants, the complainant filed a complaint before the Crime Branch, Jammu and on the basis of complaint, Crime Branch Jammu registered the FIR No.36/2018 dated 17.11.2018; that on the basis of said FIR, both the applicants were arrested on 17.11.2018; they have filed an application for grant of bail before the court of learned CJM, Jammu which was dismissed on 24.11.2018, thereafter another application was filed before the learned 2nd Additional Sessions Judge, Jammu, who also dismissed the same on 30.11.2018; that transaction between the parties is purely of civil nature, so the criminal proceedings should not have been lodged; that it was agreed that the complainant shall pay total amount of rupees 26 crores in his capacity as a developer and the property shall be sold to a third-party jointly. Admittedly the complainant could not arrange for the balance funds, so the MOU was frustrated; that the courts below have not properly appreciated the transaction between the parties which was purely of civil nature; that as per SRO 202, the Crime Branch, Jammu is not competent to investigate the matter; that there was no intention of the applicants to cheat the complainant.

2. The State has filed the objections wherein it has been stated that on receipt of the complaint, a preliminary verification was conducted and on the basis of enquiry the allegations leveled by the complainant have been, prima facie, proved and the accused agreed to have received an amount of Rs.12.90 crores against the property in question from the complainant but after taking the amount they utilized the same for other purposes instead of liquidating the bank loan pending against the said property and planned to sell the property without seeking permission from the bank authorities and the fact of Rs.29.00 crores loan liability against the bank was intentionally concealed in order to cheat the complainant and to take the money from the complainant and after taking Rs.12.90 crores the accused failed to give 50% of the possession of the land to the complainant and also to obtain NOC from the Bank and thus not only cheated the complainant and also played fraud with the Bank authorities after hatching conspiracy with criminal intention and thus have caused huge loss to the complainant.

3. On the basis of enquiry, case FIR No.36/2018 under Sections 420/120-B RPC has been registered in Crime Branch, Jammu against (1) C.K. Gulhati S/o Late C.L. Gulhati R/O Sidhra, Jammu, (2) Sandeep Gulhati S/o C.K. Gulhati R/o 8 B/B Gandhi Nagar, Jamm, (3) Shalinder Gulhati S/o C.K. Gulhati R/o 28/6 Channi Himmat, Jammu and (4) Divya Ashish Singh Jamwal S/o Diwakar Singh R/o 129 A/D Gandhi Nagar, Jammu and the investigation started. It has further been stated that the accused after obtaining money from the complainant amounting Rs.12.90 crores by way of inducement & cheating have not deposited in loan account but have deliberately and intentionally utilized for other purposes in order to cheat the complainant thereby causing loss of Rs.12.90 crores to him. The trial of money is being investigated. That during the course of investigation, accused (1) Sandeep Gulhati S/o C.K.Gulhati R/o 8 B/B Gandhi Nagar, Jammu

and (2) Shalinder Gulhati S/o C.K.Gulhati R/o 28/6 Channi Himmat, Jammu have been arrested in the case on 17.11.2018 and are presently lodged in Judicial Lockup at District Jail, Amphala, Jammu vide court order dated 26.11.2018. That from the investigation conducted so far it is observed that there are huge liabilities amounting to Rs.70 to 80 crores approximately pending against the firm and the individuals, which are in shape of Bank Loan, PPF of the employees, salary of the employees, Sales Tax and Income Tax, GST etc. It has therefore, been prayed that the application be dismissed as the applicants/accused are involved in the heinous offence of cheating, they have duped the complainant of huge amount to the tune of Rs.12.90 crores and the said amount is yet to be recovered. It is further stated that as per the investigation and reports, the concerned firm has not paid/maintained the PPF of its employees and in this regard, another complaint No.J-95/2018 dated 05.03.2018 is also under probe with this organization, which is lodged by the employees National Garages through Sandeep Raj S/o Mulkh Raj R/o Doda at present Lower Barnai, Jammu and an amount of Rs.3,13,78,838/- as PPF is still pending disbursement as per report No.Addl.PFC/J/3203 dated 30.11.2018 obtained from Addl. Provident Fund Commissioner, Jammu. The investigation conducted so far has revealed that the concerned firm/individuals have not filed any Income Tax Returns since 2016 as per Audit Report No.JSVP/CA/2018-19 dated 22.11.2018.

4. I have considered the rival contentions of learned counsel for the parties.

5. Learned counsel for the applicants/petitioners while arguing the matter have reiterated all the grounds taken in the memo of bail application, whereas the learned counsel for the respondents have supported the orders of the courts below and have prayed for rejection of the bail.

6. In order to understand the matter, it is profitable to reproduce the contents of the FIR No.36/2018 dated 17.11.2018 under Sections 420/120-B RPC, registered at Police Station, Crime Branch, Jammu, are as under:

"Complainant Navneet Mahajan moved a written complaint before Police Station Crime Branch, Jammu alleging therein that one G.K.Gulhati, Shalinder & Sandeep Gulhati are jointly running/owing & controlling their business in the name & style of M/s National Garages in Jammu and Srinagar and are dealers of Tata Motors. That one of the common family friend namely Divta Ashish Singh Jamwal, son of Thakur Dewakar Singh, resident of 129 A/D Gandhi Nagar, Jammu induced the complainant and his father, namely, Late Sh. D.K.Mahajan that the above named accused persons jointly own and controlled two pieces of land at Gangyal Jammu measuring 29 kanals, which they wish to sell or develop and out of his cunning plan, induced the complainant in this deal and initiated the talks. The father of the complainant was a leading businessman of Jammu and complainant being son was assisting in the business of coal which was the main business besides other businesses in Jammu and Kashmir. The complainant's father was suffering from ailment like Parkinson Disease and due to the criminal acts of the accused the said problem deteriorated because of

tension, stress and anxiety caused by the accused as hard earned money to the tune of Rs.12.90 crores of the complainant and his family had been duped/swindled in a well mannered, planned and executed white colored scam by the accused. The deal of for the said 29 kanals of land was finalized in good faith and the price of land was fixed Rs. 26.00 crores. Vide an agreement/MOU with the complaint dated 10.08.2015 the rate was fixed 26.00 crores and Rs.6.00 crores were admitted to have been received and Rs.7.00 crores were due. After paying Rs.12.90 crores it was decided that the complainant shall be come 50% owner of land and in time stipulation for the further payments was described in the said MOU reduced in writing by accused Divya Ashish Singh Jamwal. The complainant further alleged that the gullible complainant was cheated by saying that the properties, i.e., National Garages Gangyal and National Garages Rehari were pledged in Syndicate Bank and as soon as they (accused) received half of the payment, i.e., Rs. 13.00 crores the hypothecation of the land in question at Gangyal will be got released by the accused and the half of the property thereupon will be got released by the accused and half of the property thereupon will be transferred on the name of the complainant and rest of making payment of another half will be transferred. After making the half of the payment to the complaint amount to Rs.12.90 crores, the complainant came to know that the mortgage/hypothecation of the land in question was not released by the accused as promised and not even a single penny was deposited with the bank, thus cheated the complainant etc. On receipt of this complaint, a preliminary verification was conducted and on the basis of the enquiry the allegations leveled by the complainant have been prima facie proved and the accused agreed to have received an amount of Rs.12.90 crores against the said property from the complainant but after taking the amount they utilized the same for other purpose instead of liquidating the bank loans pending against the said property and planned to sell the property without seeking permission from the bank authorities and the fact of the Rs.29.00 crores loan liability against the bank was intentionally concealed in order to cheat the complainant and to take the money from the complainant and after taking approximately Rs.13.00 crores the accused failed to give 50% of the possession of the land to the complainant and also to obtain NOC from the bank and thus not only cheated the complainant and also played fraud with the Bank Authorities after hatching conspiracy with criminal intention and thus have caused huge loss to the complainant. On the basis of enquiry, the omission and commission thereof on the part of (1) C.K. Gulhati S/o Late.C.L.Gulhati R/O Sidhra, Jammu (2) Sandeep Gulhati S/o C.K.Gulhati R/o 8 B/B Gandhi Nagar, Jammu. (3) Shalinder Gulhati S/o C.K.Gulhati R/o 28/6 Channi Himmat, Jammu (4) Divya Ashish Singh Jamwal S/o Diwakar Singh R/o 129 A/D Gandhi Nagar, Jammu prima facie constitutes offences punishable under Sections 420/120-B RPC. Accordingly, a case FIR No.36/2018 u/ss 420/120-B RPC has been registered in Police Station Crime Branch Jammu against the accused persons".

7. From perusal of the case file, it is evident that after the arrest of the

applicants/petitioners, they had moved an application before the learned Chief Judicial Magistrate, Jammu, which was dismissed on 24.11.2018. Thereafter the applicants/petitioners had moved an application before the learned 2nd Additional Sessions Judge, Jammu, which too was dismissed on 30.11.2018. Both the courts below have dismissed the applications on the ground that the petitioners have cheated the complainant, duped him with an amount to the tune of Rs.12.90 Crores. This amount was received by the applicants/petitioners on the assurance that they will take up the action for redeeming the amount in question, but they did not do so.

8. I have given my thoughtful consideration to whole aspects of the matter and gone through the law on the subject.

9. It is well settled that the factors to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail and tampering with the evidence or witnesses, if granted bail. These are some of factors and not exclusive factors to be considered while granting bail. Grant or rejection of bail depends upon facts and circumstances of each case. A general law cannot be applied in every case where punishment for which accused is charged is not punishable with death or life, bail shall be granted as a matter of right after the accused are sent to judicial lock up. There are quite different considerations while granting bail during investigation and during trial. During investigation, the investigating agencies are at threshold to collect the evidence in support of allegations, so a great care or caution is required by court while granting bail. But during trial investigating agency would have already collected the evidence in support of charges, so court can exercise the discretion properly.

10. In present case, offence alleged against the accused persons is very serious involving deep rooted planning in which, huge financial loss of about Rs.12.90 crores is caused to complainant; as per prosecution investigating agency is yet to collect the vital proofs in support of charges, so there is possibility of the accused persons tampering with the witnesses. Although the charge is that of cheating and dishonestly inducing delivery of money and punishment for a term which may extend to seven years, but allegations are serious as about Rs.12.90 crores complainant has been duped by petitioners.

11. The argument of counsel for petitioners that from bare perusal of contents of FIR, it appears that there is breach of agreement (MOU) so dispute is of civil nature and criminal proceeding cannot be initiated, is not tenable. Because investigation is at threshold and there is specific allegation in complaint that after taking Rs.12.90 crore, accused were required to liquidate the loan to bank and handover possession of half of 29 kanals of land, but petitioners utilised the money otherwise. Further in criminal proceeding of cheating, misappropriation and criminal breach of trust relating to money, there is always an element of civil

liability also.

12. Another argument of counsel for the petitioners that even if allegations levelled in FIR/complaint are taken as it is, no offence of cheating is made out, is also not tenable. Because from bare perusal of written complaint made to C/B by complainant, it is evident that specific allegations have been levelled, as to how petitioners induced the complainant to pay the money and then how petitioners utilised the same for their own purpose. The relevant para of said complaint reads as under:-

"Para 6. That while cheating the complainant, the accused in various meetings had assured him, that after receiving the payment, the title and possession of the land will be transferred on his name immediately for said 29 kanals of land owned by M/s National Garage-a company owned by the accused persons and price was fixed @ Rs.26 Crores for the said land. Vide an agreement/MoU with complainant dated 10.08.2015, the rate fixed was Rs.26 crores and 06 crores were admitted to have been received and Rs.07 crores were due. After paying Rs.12.90 crores it was decided that the complainant shall become the 50% owner of the land the time stipulation for the further payments was described in the said MoU, reduced in writing by the said accused no.4-Sh.Divya Ashish Singh Jamwal. That the gullible complainant was cheated by saying that the properties i.e.National Garage Gangyal (land in question) and National Garage Rehari were pledged in Syndicate Bank and as soon as they received half of the payment i.e.Rs.13 crores, the hypothecation of the land in question (Gangyal land) will be got released by accused and the half of the property thereupon will be transferred on the name of the complainant and rest after making payment of another half the rest will all be transferred. Copy of the said MoU is attached as Annexure-A"

13. From bare perusal of whole facts of the case, I am of the considered opinion that criminal intentions of petitioners to cheat the complainant, was existing right from beginning of execution of MOU. Lastly counsel for petitioners has argued with regard to appreciation of contents of MOU and other facts, but I am of the considered view that while considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits have to be avoided. At present, there is existence of a prima facie case of cheating and duping of about Rs.12.90 crores by accused from the complainant. The nature of the accusation is severe. Investigation is at threshold; vital evidence is yet to be collected.

14. In view of what has been discussed above, this petition is dismissed at this stage.