IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No..........OF 2014

MEMO OF PARTIES

Hardeep Singh Bhachu son of Harbhajan Singh c/o M/s Bhachu Builders & Architect, village Atta, Tehsil Phillaur, District Jalandhar.

(Now confined in Central Jail, Jalandhar).

..........Petitioner.

Versus

State of Punjab .......Respondent.

CHANDIGARH (MUNISH BHARDWAJ)

DATED 11.04.2014 ADVOCATE

COUNSEL FOR THE PETITIONER

Petition under section 439 of Cr.PC for grant of regular bail to the petitioner in FIR No.36 dated 05.03.2014 under section 406/420 IPC registered at P.S.Division No.3, Jalandhar.

Issue any other order or direction which this Hon’ble Court deems fit and proper under the facts and circumstances of the case.

Respectfully Showeth:-

1. That the petitioner is permanent resident of District Jalandhar. He is filing the present petition for grant of regular bail in FIR No.36 dated 05.03.2014 under section 406/420 IPC registered at P.S.Division No.3, Jalandhar.
2. That abovesaid FIR is registered on the complaint of one Nalin Suri with the allegations that petitioner has taken an amount of Rs.27 lacs from complainant for the construction of his house including cost of material but he has not completed the house and thus he has committed fraud with the complainant. A copy of the FIR is attached herewith as **Annexure P-1**.
3. That totally wrong case has been registered against the petitioner and he is wrongly involved in the present case just to harass and pressurize him for extraneous reasons. Briefly stated the facts of the case are that petitioner is Builder by profession. Complainant has contacted the petitioner for construction of 6 marla double storey house after demolishing his old house. Consequently an agreement was entered into between the parties for the construction of aforesaid house for total consideration of Rs.35,50,000/- which includes cost of material. A copy of the agreement is attached herewith as **Annexure P-2**.
4. That perusal of terms and conditions of agreement shows that complainant has to pay 15,00,000/- (Fifteen Lacs) on 1.9.2012 as advance and Rs.10 lacs is to be paid after lanter of Ground Floor, Rs.5 lac after lanter of First Floor, 3 lacs after lanter of Second Floor, 1 lac on plaster and remaining amount of Rs.1,50,000/- on completion of work. Petitioner started the work honesty by deploying 4 masons and 10-12 labourers after getting Rs.15 lacs as advance. Building material like Bricks, Cement, Sand, Iron Rods, Concrete Marble, Sanitary Goods/material, Titles etc. was also purchased by the petitioner which was of good quality and was shown to the complainant before affixing the same.
5. That petitioner almost completed the house and received another sum of Rs.10,00,000/- and thus he got total sum of Rs.25,00,000/- out of total sum of Rs.35,50,000/- leaving a sum of Rs.10,50,000/-. When petitioner asked for the balance amount then a dispute arose between the petitioner and complainant. Instead of paying the balance amount, complainant started quarrelling with the petitioner and started making lame excuses and also threatened the petitioner of dire consequences if he ever demanded money.
6. That in such circumstances, petitioner filed application under sub-section 2 of Section 15 of the Payment of Wages Act, 1936 read with section 45 of the Building and Other Construction Workers (Regulation of Employment & Service Conditions) Act, 1996 before the Assistant Labour Commissioner, Circle No.2, Jalandhar, a copy of the same is attached herewith as **Annexure P-3**. As a counterblast to the application of the petitioner, complainant made a complaint to the police by leveling wrong allegation.
7. That totally false case has been registered against the petitioner and he is wrongly involved in the present case. The aforesaid facts clearly shows that dispute between the parties is purely civil in nature. Admittedly, complainant has entered into agreement with the petitioner for construction of his 6 marla double storey house for total consideration of Rs.35.50 lacs including cost of material. The agreement commence on 1.9.2012 and dispute arose between the parties in Feburary, 2013. Meaning thereby that petitioner has done work for five months and he has completed almost all construction work and only minimal work has remained. Dispute arose only later on between the parties as complainant refused to release the balance amount.
8. That falsity of allegations against the petitioner is proved from the perusal of the FIR itself. It is alleged that complainant has made payment of Rs.15 lacs on 1.9.2012 as advance and Rs.10 lacs on 5.9.2012 after lying of lanter of Ground Floor. It is unbelievable that lanter would be laid within five days from the start of work and complainant has released such huge amount within five days particularly when the old house is to be demolished. Actually, initially work of demolition of old house has started on 1.9.2012 and thereafter new construction started on 15.10.2012 and petitioner received Rs.10 lac after laying of lanter in two installments. First on 22.1.2013 and second on 29.1.2013. Thereafter, no payment was made by the complainant to the petitioner and he was not allowed to enter the premises and his costly building material like shuttering and mixture machine is also lying with the complainant.
9. That perusal of FIR further shows that inquiry of the complaint was conducted by ADCP-City I and it has come in the inquiry that complainant has got completed his pending work by giving Rs.8 lac to another contractor and this is the amount due to the petitioner even if we accept the allegation of the complainant that he has paid Rs.27 lacs to the petitioner though Rs.10.50 lac was due because petitioner has received only an amount of Rs.25 lacs out of total amount of Rs.35,50,000/-. So there is dispute with regard to payment only and no offence under section 406/420 is made out.
10. That present FIR is nothing but is a counterblast to the application filed by the petitioner before the Assistant Labour Commissioner, Jalandhar. Petitioner filed the application before the Assistant Labour Commissioner, Jalandhar on 20.08.2013 and as a counterblast complainant made complaint to the police on 29.08.2013. The fact about pendency of application before the Asstt. Labour Commissioner was brought to the notice of the Inquiry Officer and he was very well aware about the pendency of the case between the parties before the Asstt. Labour Commissioner, Jalandhar which is clear from the FIR also but even then he recommended for registration of FIR.
11. That petitioner filed bail for regular bail. However, his bail application was dismissed by the Ld. Addl. Sessions Judge, Jalandhar vide order dt.29.03.2014, a copy of which is attached herewith as **Annexure P-4**. The Ld. Addl. Sessions Judge, Jalandhar totally failed to appreciate the facts of the case and wrongly dismissed the bail application on the ground that huge amount of Rs.27 lacs is involved in the present case. It failed to appreciate that this amount was used by the petitioner in purchasing building material i.e. Bricks, Cement, Sand, Marble, Tiles, payment of labour etc. It also failed to appreciate that there was agreement between the parties for the construction of the house and dispute between the parties was purely civil in nature.
12. That petitioner is arrested in this case on 13.3.2014 and since then he is behind the bar and thus no more required for the purpose of investigation. The petitioner undertakes to abide by all the terms and conditions imposed by this court.
13. That petitioner has not earlier filed any other petition in the matter, either in this Hon’ble Court or in the Hon’ble Supreme Court of India or no bail application is pending before the Hon’ble Session Court.

PRAYER:

It is, therefore, respectfully prayed as under:-

1. That present petition be allowed and petitioner may kindly be released on bail in FIR No.36 dated 30.5.2007 under section 307, 323, 324, 452, 506, 148/149 IPC registered at P.S.Sadar, District Jalandhar;
2. Issue any other order or direction which this Hon’ble Court deems fit and proper under the facts and circumstances of the case;
3. Exempt the petitioner from filing certified copies of Annexure P-1 to P-4.

CHANDIGARH (MUNISH BHARDWAJ)

DATED 11.04.2014 ADVOCATE

COUNSEL FOR THE PETITIONER

Note: No affidavit is necessary.

ANNEXURE P-1

FIRST INFORMATION REPORT

(Under Section 154 Cr.P.C)

1.District: Jalandhar City PS: DIVISION 3 JULLUNDER Year 2014 FIR No.36 Dated:05.03.2014

2. (i) Act: IPC 1860 Sections : 406, 420 IPC.

(ii)

(iii)

(iv)

3. Occurrence of Offence

(a) Day : Saturday Date from 01-09-2012 Date to 05.03.2014

Time Period Time From Time to

(b) Information received at P.S. Dated 05.03.2014 Time 17.15 hrs.

(c) General Diary Reference Entry No.2 Time 17.15. hrs.

4. Type of Information : Written

5. Place of Occurrence:

1. Direction and distance from P.S.: North/1-5 Km. Beat No.09
2. Address: - BIKRAMPURA JALANDHAR CITY
3. In case, outside the limit of this Police Station then Name of P.S. – District -

6. Complainant/Informant:

(a) Name : NALIN SURI S/O LATE SHIV KUMAR SURI

(b) Birth Year: Nationality : - INDIA

(c) Passport No: Date of Issue Nil Place of Issue

(d) Occupation :

(e) P R/os:

C R/o Prop. M/s Bachu Builders and Architect, Village Atta, Tehsil Phillaur, District Jalandhar.

7. Details of knows/suspected/unknown accused with full particulars (Attach Separate Sheet, If necessary)

(i) Hardeep Singh alias Bachu s/o Sh.Harbhajan Singh

P R/o

C R/o Prop. M/s Bachu Builders and Architect, Village Atta, Tehsil Phillaur, District Jalandhar.

(ii)

(iii)

8. Reason for delay in reporting by the complaint/informant: NO DELAY

9. Particulars of properties stolen/involved (Attach Separate sheet, if

necessary)

Sl. No.Property Type (Description) Est.Value(Rs.) Status

(i)

(ii)

(iii)

10. Total Value of property stolen:

11. Inquest Report/U.D. case No. if any

12. F.I.R. contents (Attach separate sheet, if required)

Complaint No.2703-Peshi dated 29.08.2013/Com.

To Hon’ble Police Commissioner Sahib,

Jalandhar.

Sub: Complaint against Hardeep Singh Bachu Prop: M/s Bachu

Builders and Architect Village Atta District Jalandhar Mobile No.098154-87456 Phone No.01826264246 for committing fraud of Rs.27,00,000/- with complainant and leaving the construction of two storeyed building and for giving threats of kill or involve in some false case.

Sir,

It is humbly requested to you regarding the abovesaid subject that person, namely Hardeep Singh Bachu mentioned in the abovesaid subject is builder by profession and he in a deceitful manner entered into an agreement with the applicant in the year 2012 to construct two storey building of the applicant for total amount of Rs.30,00,000/-. Thereafter, he came in the year 2013 and told about the increase of cost of material. On which, Rs. 35,00,000/- was fixed for the construction of my two storey building and he took Rs.15,00,000/- on 1.9.2012 as advance from me and then he took Rs.10,00,000/- on 5.9.2013 on lying of lanter and then he took Rs.2,00,000/- on 22.2.2013. Even after taking total amount of Rs.27,00,000/-, he has only raised structure of the building and is dilly delaying in construction of the building. On my asking, he started abusing me and taking advantage of my handicap, he is giving threats to me that he will kill me and nobody will harm him and the agreement written with me has also been written in his favour after taking me into confidence. You cannot do any harm to him and he has links with higher ups. I can do whatever I want. He can do whatever he want. I know how to take my amount but I do not know how to do work in return of it. Do whatever you want to do. If you take any legal action then you will face dire consequences of it. Whereas I and my family belong to peace loving family and incapable of facing this man. Kindly, take necessary action against this person and my pending building be got constructed. If any harm to life and property to me and any of my family members is caused then the person mentioned in the subject will be responsible. Kindly, my right be protected. I will be highly thankful to you. Yours Sincerely sd/- In English Nalin Suri s/o Late Sh.Shiv Kumar Suri r/o H.No. ND-34 Bikrampura, Near Chintpurni Mandir P.S.Div.No.3, Jalandhar. Mob: 98881-18099. The inquiry of the complaint was conducted by ACP Sahib/North who has written in his inquiry report that Sh.Nalin Suri s/o Late Sh.Shiv Kumar Suri r/o H.No.ND-34 Bikrampura Jalandhar Near Chintpurni Mandir, Jalandhar was working as Supervisor in a private company at America in the year 1997 and due to accident in America he came to India in the year 2004 and after returning to India, he has talked to Hardeep Singh @ Bachu r/o village Atta, Tehsil Phillaur, District Jalandhar for raising construction of his house by demolishing his old house and told him to prepare the estimate. On this Hardeep Singh @ Bachu has given an estimate of Rs.32,00,000/-. Regarding this an agreement was also executed on 1.9.2012 on the letter head of Bachu Builder’s and Architect, Village Atta, Tehsil Phillaur, District Jalandhar on certain terms and conditions. Hardeep Singh @ Bachu has started the work regarding construction of aforesaid house on 1.9.2012 and took Rs.15,00,000/- as advance from applicant Sh.Nalin Suri. When construction reached at the level of lanter, then he took another sum of Rs.10,00,000/- on 5.9.2012 and then contractor Hardeep Singh took Rs.2,00,000/- from Nalin Suri on 22.2.2013. In this manner, Hardeep Singh took total amount of Rs.27,00,000/- from applicant, Nalin Suri whereas only structure of house is raised. Contractor, Hardeep Singh @ Bachu after leaving this work at half way, got busy in his other work and he has not completed the work of construction inspite of repeated request by applicant Nalin Suri and keep on demanding more money and he has also not used the material for the construction of house as per terms and conditions. In the end, applicant got constructed the house after spending Rs.8 lacs from some other contractor. When, applicant asked for the bills of the material used in the construction of the house, then Hardeep Singh @ Bachu instead of settling the accounts with the applicant Sh.Nalin Suri, filed case in the Labour Court. In this manner, Hardeep Singh @ Bachu by taking Rs.27 lacs from the applicant as per agreement entered into while giving contract and by not completing the construction and not using the material mentioned in the agreement committed fraud with the applicant. Therefore, it is recommended that after taking legal advice from D.A.Legal necessary action be taken against contractor, Hardeep Singh @ Bachu s/o Sh.Harbhajan Singh r/o village Atta, Tehsil Phillaur, District Jalandhar. Report is presented. Sd/- Assistant Commissioner of Police, North, Jalandhar. He after preparing the repost sent the same to ADCP-City I and ADCP-City I after concurring with the report sent the inquiry report to Hon’ble Commissioner of Police, Jalandhar and on this Hon’ble Commissioner Sahib has written to D.A.Legal Pl.Examine and opinion. On this District Attorney (Legal) has given his opinion. Sub:- Complaint No.2703-Peshi dated 29.08.2013 From Nalin Suri son of Shiv Kumar Suri. Sir, I have gone through the facts of this complaint and enquiry report of ACP/North Jalandhar which is duly forwarded by ADCP-1 Jalandhar as well as documents placed with the file very carefully. From the fact of enquiry report I am of the opinion that facie a case u/s 406/420 of IPC is made out against Hardeep Singh within the jurisdiction of PS Div.No.3 Jalandhar. The case may be registered, if approved please. Sd/-Dy.Distt. Attorney (Legal) Jalandhar. Dt.28.02.2014 W/CP Jal. On this Hon’ble Commissioner of Police has ordered to investigate after registering case. Sd/- Commissioner of Police, Jalandhar dt.5.3.14.

Today at Police Station: On receipt of complaint in the Police Station, this FIR is registered under aforesaid sections and copy of FIR alongwith original complaint and Inquiry report is handed over to ASI Bhajan Ram ASI No.1927 for further investigation. Control Room and SHO PS is informed through Telephone Report No.23 dt.5.3.14.

Takmil report 23 dated 05.03.2014 at 6.30 PMs

13. Action taken/since the above report reveals commission of offence(s) u/s as mentioned at Item No.2.

1. Registered the case and took up the investigation.
2. Directed (Name of I.O.) BHAJAN RAM RANK ASI

No.01927 JAL to take up investigation or

1. Refused investigation due to OR District
2. Transferred to P.S.(name) on point of jurisdiction

FIR read over to the complainant/Informant admitted to be correctly recorded and a copy given to the comaplainant/Informant, free of cost

R.O.A.C.

14. Signatures/Thumb impression of complainant/informant

Signature of Officer

Name LAKHVIR SINGH

RANK ASI No.1283 JAL

15. Date and time of dispatch to the Court

TRUE TRANSLATION

ADVOCATE

Annexure P-3

BEFORE THE AUTHROITY UNDER THE PAYMENT OF WAGES ACT-CUM-ASSISTANT LABOUR COMMISSIONER, CICLE NO.2, JALANDHAR

Application under sub-section 2 of Section 15 of the Payment of Wages Act, 1936 read with Section 45 of the Building and Other Construction Workers (Regulation of Employment & Service Conditions) Act, 1996.

Hardeep Singh s/o S.Harbhajan Singh village Atta, P.O.Goraya, Tehsil Phillaur, Distt. Jalandhar.

……Applicant.

Versus

Sh.Nalin Suri owner of House No.34, Bikrampura Near Tanda Phatak, Jalandhar.

….Respondent.

Sir,

It is respectfully submitted as under:-

1. That the applicant is a mason (mistry) by profession and do construction work on daily or piece rate/Contract basis.
2. That the respondent engaged the applicant for construction of his house House No.34, Bikrampura, Near Tanda Phatak, Jalandhar as per agreement arrived at between the parties on 1.9.2012. As the respondent was a handicapped person, he has shown his inability to purchase the building material i.e. Bricks, Cement, Sand, Iron rods, Concrete, Marble, Sanitary goods/material, Tiles the detail of articles to be required as also mentioned in the agreement. Copy of the said agreement is attached herewith.
3. That the old structure of the house was first dismantled and the building was of two storey building and the first level of the roof was 10’ from DPC as mentioned in the agreement. After much discussion, the total amount to be paid by the respondent including the material used for construction work, was to be tune of Rs.35,00,000/-.
4. That the applicant startd work honestly by deploying 4 masons and 10-12 labourers and we worked as a team and the construction work is a team work and cannot be done by a single person and the work was started on 1.09.2012.
5. That the building material was purchased by the applicant for the respondent and was of good quality and was shown to the respondent before affixing the same.
6. That the respondent during the course of construction work paid a sum of Rs.25,00,000/- on different dates leaving a balance sum of Rs.10,00,000/- and the respondent instead of paying the balance amount started quarreling with the applicant making lame excuses and also threatened the applicant of his elimination in case he ever thought of making any complaint against the respondent.
7. That the respondent even did not allow the applicant and his other persons to lift the shuttering material and other tools from the premises and a costly material building including 20 bags cement is lying with the respondent. The respondents warned the applicant that no payment would be made to him and also no materials which the applicant has hired was allowed to be carried away.
8. That the balance amount of Rs.10,00,000/- and the amount has not been paid despite repeated requests and reminders made by the applicant in this respect.
9. That a total amount of Rs.10,00,000/- is payable by the respondent which has not been paid despite repeated requests and reminders.

It is prayed that a direction under sub section 3 of the section 15 of the aforesaid Act be issued to the respondents alongwith interest and ten times compensation in the interest of justice. The above information given by me is correct and accurate. The applicant reserve his right to add or amend the application.

Dated 20.08.2013 Applicant

Through

(J.S.PERHAN)

AUTHORISED REPRESENTATIVE

True Copy

Advocate

Annexure P-4

IN THE COURT OF SH.HARJINDER PAL SINGH, ADDL. SESSIONS JUDGE, JALANDHAR

Bail Application No.1550/2014

Filing No.2629/2014

Case Code No.202500026292014

Instt. On 21.03.2014

Decided on: 29.03.2014

State Versus Hardeep Singh Bhachu aged 37 years son of

Harbhajan Singh c/o M/s Bhachu Builders &

Architect, Village Atta, Tehsil Phillaur, District

Jalandhar.

……..Accused/Applicant.

FIR No.36 dated 05.03.2014

Under Section 406/420 IPC

P.S.Div. No.3, Jalandhar.

First Bail application under section 439 Cr.P.C.

Present: Sh.M.S.Sachdev, Advocate, Counsel for applicant/Accused.

Addl.P.P. for the State.

ORDER:

This order of mine will dispose off the application for bail filed under section 439 Cr.P.C by the accused/applicant Hardeep Singh Bhachu in the above noted FIR.

1. It is stated in the application that applicant/accused has been falsely implicated in the present case. He is not involved in the alleged offence in any way. Even otherwise no offence is made out against the applicant/accused. The applicant/accused was working as contractor and there was contractual obligation between the contractor and the complainant and on the basis of said contract, the work was started. The complainant refused to make the payment and ultimately a petition was filed before the Labour Court. The complainant is very influential person and he with an idea to put pressure upon the applicant/accused has filed false complaint. The applicant/accused is in custody since 13.03,2014 and no more required for the purpose of investigation. The applicant/accused undertakes to abide by all the terms and conditions imposed by this court. It is prayed that his regular bail application may be allowed.
2. Notice of the bail application given to Addl. PP who vehemently opposed the bail application. Record was summoned and peused.
3. Heard. As per the facts of the case complainant Nalin Suri son of Late Shiv Kumar Suri resident of House No.ND-34, Vikrampura Near Chintpurni Mandir moved an application with the Commissioner of Police, Jalandhar against applicant/accuses with the allegations that Hardeep Singh Bachu is a Contractor and said Hardeep Singh Bachu has taken a contract from the complainant in the year 2012 for the construction of two storied building for Rs.30,00,000/-. In the year 2013 accused had come and refused to carry out the construction on the pretext of high prices of the material and accordingly the contract was fixed for Rs.35 lacs. First instalment of Rs.15 Lacs was given to accused on 1.9.2012. Second instalment of Rs.10 lacs was given on 05.09.2012 and Rs.2 lac was received by accused on 22.2.2013. In this way the accused has received a sum of Rs.27 lacs from him but he has partly constructed the building. On asking by the complainant, the accused started abusing him. The complainant further mentioned that he is a handicapped and due to this accused threatened to kill him and told that complainant cannot take any action against him as the agreement was in favour of the accused. Accused has refused to complete the construction. On the basis of this application enquiry was conducted by ACP (North), Jalandhar and on the basis of this enquiry opinion of DA (Legal), Jalandhar was obtained and accordingly a case under section 406/420 IPC was registered against the applicant/accused.
4. As per the allegations as contained in the FIR, the accused allegedly entered into an agreement to construct the house of the complainant for a sum of Rs.35 lacs. Out of the said amount, complainant has paid a sum of Rs.15 lacs on 01.09.2012, Rs.10 lacs on 05.09.2012 and Rs.2 lacs on 22.02.2013 (total Rs.27 lacs). Despite receipt of this huge amount the applicant/accused has not completed the work of construction. When the complainant asked him to complete the construction, as a result of which the complainant has to engage another Contractor to complete the remaining work. In this way the accused has cheated the complainant. Huge amount of Rs.27 lacs is involved in the present case. So keeping in view the gravity of offence and the manner in which it has been committed, the applicant/accused do not deserve the concession of regular bail and the regular bail application of applicant/accused is dismissed. Bail application record be consigned to the record room.

Pronounced (Harjinder Pal Singh)

Dated 29.03.2014 Addl. Sessions Judge,

Jalandhar

True Copy

Adovocate

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No................OF 2014

Hardeep Singh Bhachu …..………Petitioner.

Versus

State of Punjab …..…….Respondent.

I N D E X

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CHANDIGARH (MUNISH BHARDWAJ)

DATED 11.04.2014 ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No................OF 2014

Hardeep Singh Bhachu …..………Petitioner.

Versus

State of Punjab …..…….Respondent.

Court fee stamps of Rs…………… are affixed hereunder.

CHANDIGARH (MUNISH BHARDWAJ)

DATED 11.04.2014 ADVOCATE

COUNSEL FOR THE PETITIONER