

Rajdeep Sharma vs State Of Himachal Pradesh on 2 August, 2021

Author: Vivek Singh Thakur

Bench: Vivek Singh Thakur

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IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.M.P.(M) No. 386 of 2021

Date of Decision: August 2, 2021

Rajdeep Sharma

...Petitioner

Versus

State of Himachal Pradesh

..Respondent.

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?1

For the Petitioner:

Mr.N.S. Chandel, Senior
alongwith Mr.Vinod Gupta,
through Video Conferencing.

Ad
Ad

For the Respondent:

Mr.Raju Ram Rahi, Deputy Advocate
General, through Video Conferencing.

Ms.Shilpa Sood, Advocate, for the
complainants, through Video Conferencing.

Vivek Singh Thakur, J.

The instant petition has been filed under Section 438 of the Criminal Procedure Code (in short Cr.P.C.) seeking anticipatory bail in case FIR No.246 of 2020, dated 31.10.2020, registered in Police Station Sadar, District Shimla, H.P., under Section 420 of the Indian Penal Code (in short 'IPC').

2. Status report stands filed.

1 Whether reporters of the local papers may be allowed to see the judgment?

3. Petitioner has also filed certain documents to substantiate his prayer for enlarging him on bail.

4. I have heard learned counsel for the petitioner, .

learned Deputy Advocate General and also learned counsel appearing for the complainants.

5. As per status report, complainants, who are husband and wife, had approached Police Chowki Lakkar Bazar, Shimla, with a complaint on the basis of which FIR No.246 of 2020 has been registered in Police Station Sadar, Shimla. In the complaint, submitted by the complainants to the police, it is submitted that complainants have purchased a flat bearing No.401 on the Top Floor alongwith attic in four storeyed building known as Block-A built in Up-Mohal Kaleston, Tehsil Shimla (Urban) District Shimla for consideration of `80,00,000/- which stands paid to petitioner-

Rajdeep Sharma, whereupon a registered sale deed has been executed in favour of the complainants, mutation whereof is yet to be attested and it is case of the complainants that attestation of mutation has been deferred/stopped for instructions issued by the petitioner and his Company to concerned Tehsildar not to do so. Earlier complainants were getting electricity through common electricity meter, but the petitioner has illegally disconnected the electricity of the complainants' flat and despite repeated requests made by the complainants, petitioner is not issuing No Objection Certificate (NOC) so as to enable the complainants to get installed electricity and water connections in their name, but the petitioner is demanding extra money of `6,50,000/- in illegal and unlawful

manner.

6. The complainants have also stated in the complaint .

that intention of the petitioner is to extort money from the complainants by taking benefit of his advantageous position and he is demanding money in addition to consideration agreed in allotment letter and sale agreement whereas there is no occasion for demanding money which has not been agreed in allotment letter and sale deed.

7. It is also stated in complaint that complainants were and are always willing to pay actual amount and still they have no objection to pay actual amount of `4,00,000/- to the petitioner provided that petitioner fulfills his contractual obligations as mentioned in allotment letter and sale deed. Further that petitioner has been changing his address every time.

8. It is stated in the status report that petitioner is in the habit of cheating innocent persons like complainants, and other persons were also constrained to lodge complaints against the petitioner leading to registration of numerous FIRs against him under Section 420 IPC. It is also stated in the status report that on verification at the address given by the petitioner, it has been found that petitioner has not been residing on those addresses at Chandigarh and other places and, therefore, it is not clear which address of the petitioner is correct one and further that there shall always be possibility of petitioner fleeing from justice and, therefore, it is submitted that petitioner is not entitled for anticipatory bail and even in case such bail is to be granted to him, his passport may be ordered to be taken into possession by the Magistrate.

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9. After registration of FIR, Investigating Agency has carried investigation. It is stated in the status report that complainants had purchased the flat for consideration of `80,00,000/- from petitioner-Rajdeep Sharma, and after receiving sale consideration of `80,00,000/-, petitioner had executed sale deed on 01.05.2017. However, it is claimed by petitioner that complainants had purchased furniture for their flat costing `4,00,000/- and for discharging this liability, complainant Paras had issued a cheque for `4,00,000/- which was dishonoured.

According to complainants, material/furniture was not provided by the petitioner and, therefore, they had instructed the bank not to honour the cheque, whereas it is claimed by petitioner that furniture stands delivered in the flat, but the complainants are not ready to pay the amount spent by him and further that complainants, at the time of execution of sale deed had not paid total amount of sale consideration, but had deducted `80,000/-

therefrom as TDS, with further claim that till date complainants have not deposited the said amount of `80,000/- with the concerned authorities of Income Tax Department and as a result thereof, petitioner was compelled to pay that tax.

10. As per complainants, after receiving total consideration and execution of sale deed petitioner was not having any right to manage postponement of attestation of mutation of property in question in favour of the complainants, but petitioner has done so in order to extort further money from the complainants and, therefore, they have approached the .

police.

11. It is stated in the status report that there are five FIRs, including present one against the petitioner, registered in Police Station Sadar, Shimla, which are similar in nature. It is further submitted that earlier point of time also as many as seven FIRs against the petitioner were lodged at various places in Punjab, Chandigarh and Haryana and in some of those cases, he has been enlarged on bail. It is further submitted that there are more than ten addresses of the petitioner or petitioner's Company, which have come in the knowledge of the police during investigation of the case which creates reasonable apprehension that after grant of bail it would be very difficult to ascertain presence of the petitioner during trial. It is also stated in the status report that at one point of time petitioner was declared proclaimed offender in one case and in present case, despite having received `88,70,000/-, entire consideration amount, he has requested the Tehsildar not to attest the mutation which establishes his dishonest intention to extort further money from the complainants.

12. Lastly, it is submitted in the status report that there is possibility that petitioner would flee to foreign country and, therefore, in case of granting him bail, his passport deserves to be taken into possession and seized as he is also not making payment of `4-5 Crores to the victims, which has been awarded vide orders passed in various complaints by Real Estate Regulatory Authority (hereinafter referred to as 'RERA'). It is .

also submitted that a letter has been received in the office of Tehsildar Shimla, wherein it has been informed by Tax Recovery Officer, Chandigarh, that an amount of `2,33,46,582/- is to be recovered from petitioner-Rajdeep Sharma and, therefore, Revenue Department has restrained transfer and mortgage of the property of petitioner situated in Up-Mohal Kaleston.

13. For attracting commission of offence under Section 420 IPC dishonesty is one of the essential ingredients. In present case petitioner is claiming his action to be bonafide, whereas, complainants are claiming that omission and commission on the part of the petitioner are definitely indicating dishonesty and thus is attracting provisions of Section 420 IPC.

14. Complainants have also approached RERA and order has been passed by RERA in their favour.

15. It is submitted by learned counsel for the petitioner that five FIRs registered in Police Station Sadar, Shimla, are nothing, but the cases registered by or on behalf of purchasers or prospective purchasers to mount pressure upon the petitioner to submit himself to their demands which are beyond the agreement arrived at between the parties. It is further submitted that most of the cases out of the cases, mentioned in status report registered against the petitioner at previous occasions, stand decided in favour of the petitioner and only two cases are pending adjudication in the Courts and these cases are the cases of similar nature filed with intention to pressurize the petitioner. It is

further submitted that dispute between the .

complainants and petitioner is contractual dispute for which civil remedy is appropriate remedy, but such dispute cannot be treated as an offence committed by the petitioner under criminal law as intention of the petitioner is clear as he is ready to issue NOC and for attestation of mutation after payment of the amount which is to be paid by the complainants as also evident from the complaint, wherein it is stated that complainants have no objection to pay actual amount of `4,00,000/- to the petitioner provided that petitioner fulfills his contractual obligations.

According to the petitioner, he has fulfilled all contractual obligations on his part, but to avoid consideration thereof, present FIR has been lodged.

16. Learned counsel for the petitioner has submitted that in case bail is granted to the petitioner, he is ready to abide by any condition imposed by the Court and further that in case at the time of granting bail, if passport is to be surrendered, then it may be directed that passport shall not be punched because according to him, after punching of passport it will create difficulty to the petitioner in his international movement on the basis of the said passport.

17. Petitioner was enlarged on anticipatory bail on 26.02.2021. Thereafter, he has joined investigation and it is submitted by learned counsel for the petitioner that petitioner has remained associated in investigation and now nothing is to be recovered or interrogated from the petitioner and, therefore, his custodial interrogation is not necessary.

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18. On the contrary, learned Deputy Advocate General as well as learned counsel for the complainants have opposed grant of anticipatory bail.

19. Learned counsel for the complainants has also placed reliance for rejection of petition, upon judgment passed by the Supreme Court in Prasanta Kumar Sarkar vs. Ashis Chatterjee and another, (2010) 14 SCC 496.

20. Considering entire facts and circumstances placed before me and nature of the offence alongwith principles and factors enumerated by the Supreme Court to be taken into consideration at the time of consideration of adjudication of bail application, I am of the opinion that claims and counter claims of petitioner and the complainants are yet to be adjudicated by the trial Court, on the basis of material to be placed before it by the Investigating Agency and at this stage, no fruitful purpose is going to be served by rejecting this petition.

21. In view of above, petitioner is directed to be enlarged on bail and interim bail granted on 26.02.2021 is confirmed, subject to furnishing personal bond by the petitioner in the sum of `1,00,000/- with two sureties in the like amount, to the satisfaction of the trial Court, within two weeks from today, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure the presence of petitioner/accused

at the time of trial and also subject to following conditions:-

(i) That the petitioner shall make himself available to the police or any other Investigating Agency or .

Court in the present case as and when required as permissible under law;

(ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(iii) that the petitioner shall not obstruct the smooth progress of the investigation/trial;

(iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;

(v) that the petitioner shall not misuse his liberty in any manner;

(vi) that the petitioner shall not jump over the bail;

(vii) that in case petitioner indulges in repetition of similar offence(s) then, his bail shall be liable to be cancelled on taking appropriate steps by prosecution; and

(viii) that the petitioner shall surrender his passport before the trial Court/concerned Magistrate and shall not leave the territory of India without prior permission of the Court and trial Court is directed not to punch the passport, but keep it in safe custody in the manner it deems fit; and

(ix) that the petitioner shall inform the Police/Court his contact number and shall keep on informing about change in address, including the address where he is staying in these days and contact number, if any, in future.

22. It will be open to the prosecution to apply for .

imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

23. In case the petitioner violates any condition imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

24. Trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc.

Instructions/93-IV.7139 dated 18.03.2013.

25. Observations made in this petition hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.

26. Petition is disposed of in aforesaid terms.

27. Copy dasti.

28. Petitioner is permitted to produce a copy of this judgment, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy but if required, may verify it from Website of the High Court.

(Vivek Singh Thakur), .

Judge.

August 2, 2021
(Purohit)

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