

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33665-2024
Reserved on: 13.11.2024
Pronounced on: 29.11.2024

Jaspal Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Pritam Singh Saini, Advocate
Mr. Deepak Singh Saini, Advocate,
Ms. Vamika Johar, Advocate and
Ms. Parul Panchal, Advocate,
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

Mr. Gurinder Singh Dhillon, Advocate,
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
240	30.06.2024	City Kharar, SAS Nagar	406, 420 IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, seeking anticipatory bail.
2. In paragraph 14 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

“5. That the present FIR has been registered on the complaint made by complainant Manjit Singh that applicant has duped him to the tune of Rs. 80 lakhs. The petitioner Jaspal Singh agreed to sell a house measuring 250 square yard in Garden Colony, Kharar for a sum of Rs. 1,24,000,00/- on 09.05.2023. Jaspal Singh received a sum of Rs. 80 lakhs from him. He was required to produce NOC for executing sale deed in his favor. The date for execution of sale deed was extended from time to time on receipt of

payment by applicant Jaspal Singh. Subsequently, he reneged from his promise and cheated him to the tune of Rs. 80 lakhs."

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

5. The State's counsel opposes bail and refers to the status report.

6. The complainant's counsel also opposed the bail and made the following submissions:

"2. That the petitioner is not entitled for the concession of anticipatory bail as petitioner has duped the deponent/complainant to the tune of Rs.80,00,000/- (80 Lacs) by entering into agreement to sell (Annexure P-2) for the house measuring 250 sq. yards situated in village Khanpur, Tehsil Kharar, Distt. SAS Nagar and in pursuance of the agreement to sell. Despite admitted receipts of Rs. 85,00,000/- by petitioner he never turned up with requisite documents to get the sale deed registered in favor of deponent/complainant.

3. That the malafide intent of the petitioner to dupe the deponent/complainant is writ large from the fact that the total sale consideration was Rs.1,24,00,000/- (1 crore twenty-four lacs) out of which the petitioner had received Rs. 80,00,000/- (80 lacs) from the deponent/complainant. While the petitioner was asking for money from the deponent/complainant and issuing valid receipts to him on one hand while in the other hand he was getting his attendance marked in the tehsil office so that he can make out a case of deponent/complainant not turning up to get the sale deed registered otherwise there was no occasion for him to get the affidavits dated 05.11.2023 and 28.11.2023 attested while taking advance sum of money from the deponent/complainant.

4. That the case of the petitioner falls flat on the ground that on 21.12.2023 (date of execution of sale deed) the petitioner was not even having a valid no objection certificate or the approved site plan which was pre-requisite for getting the sale deed registered. The relevant condition regarding obtaining the same as enumerated in the agreement to sell is reproduced her under: -

"the first party shall be bound to obtain NOC of the above said house from

the office of Municipal Council Kharar"

7. It would be appropriate to refer to the following portions of the bail petition, which read as follows:

"3. That since the complainant was not having sufficient funds to make payment of balance sale consideration, therefore, on the request made by the complainant, the date for the registration of the sale deed was extended from 24.08.2023 to 29.09.2023 thereafter extended to 29.10.2023 and then to 15.11.2023. However, the sale Deed could not be executed and on 16.11 2023 an amount of Rs. 15 lacs more as a part payment was also paid to the petitioner and the date of execution of the sale deed was extended to 25 11 2023, which is clear from the receipt dated 16 11 2023.

4. That on 25 11.2023, again the sale deed was not executed and on 11.12.2023 an amount of Rs.10 lacs more was paid in cash to the petitioner and a total amount of Rs 80 lacs was received by the petitioner on 11.12.2023 when a further date was extended to 21.12.2023, which is clear from the receipt dated 11.12.2023, a copy of which is attached herewith as Annexure P/3. It is pertinent to mention here that an amount of Rs.5 lacs in between was also paid to the petitioner on 17.11.2023.

5. That since the sale deed was not being executed by the petitioner, as the last date for execution of the sale deed had elapsed on 21 12.2023. Thereafter, a legal notice dated 05.06.2024 was got served by the petitioner upon the respondent for recession of agreement and also for forfeiture of the earnest money paid to the petitioner. Copy of the legal notice dated 05.06.2024 is attached herewith as Annexure P/4. It may be pertinent to mention here that the intention of the complainant was not to get the sale deed registered, as the complainant was not having sufficient funds to register the sale deed, that's why before the legal notice was served, the complainant had made a complaint to the police authorities and with the connivance of the police, the aforesaid FIR was registered on 30.06.2024 under Sections 406 and 420 IPC."

8. It would be appropriate to refer to the following portions of the reply, which read as follows:

"ROLE OF THE PETITIONER

8. That the contents of the complaint was investigated during preliminary investigation of the present case it has come into light that the petitioner

after receiving an amount of Rs. 80,0000/- (Eighty Lac.) from the complainant refused to execute the sale deed in favor of the complainant. The petitioner despite having the NOC dated 09.02.2024 with him, did not produce the same and received the amount on different dates as part payment of sale consideration. The intention of the petitioner is clear that despite having the NOC with him he did not executed the Sale deed in favor of the complainant. Furthermore, the conversation (recording produced in pen drive) produced by the complainant envisaged that the complainant admitted that he had received the amount of Rs. 80 Lac but petitioner categorically refused to execute the sale deed.

EVIDENCE AGAINST THE PETITIONER

9. That during the investigation the following evidence was collected qua the petitioner.

A) Copy of agreement and receipts of payment signed by both the parties to agreement to sell.

B) Pen Drive contained the recording of the complainant and the petitioner whereby the petitioner had specifically denied executing the sale deed after receiving the huge amount of Rs 80 lac.

C) The statements of witness namely Harnek Singh, Gurinder Singh, Amarjit Singh, and Hardeep Singh in support of the agreement and payment made to the petitioner through various receipts, and further the witness in their respective statements admitted that the petitioner in order to deceive the complainant denied execution of the sale deed in favor of the complainant.”

9. Although the petitioner’s malicious intent is inferable, he can be interrogated for recovery, and for such purpose, at this stage, the petitioner’s liberty should not be curtailed. The necessary steps, such as interrogating the petitioner, must be taken to recover the money; however, if the investigator fails to recover the money. In that case, the State and the complainant shall be at liberty to file an application for cancellation of this bail before the trial Court/Sessions Court, which shall be entitled to cancel this bail order.

10. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

11. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

12. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on anticipatory bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

13. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

14. This order is subject to the petitioner's complying with the following terms.

15. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

16. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and

circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

17. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

18. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

19. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

20. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

21. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

29.11.2024
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.