

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No. M-35569 of 2015
Date of Decision: 03.11.2015

Varinder Bihari Aggarwal & another

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Sant Pal Singh Sidhu, Advocate
for the petitioners.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. G.B.S. Dhillon, Advocate
for the complainant.

HARI PAL VERMA J.

Prayer in the present petition filed under Section 438 of the Code of Criminal Procedure, 1973 is for grant of anticipatory bail to the petitioners namely Varinder Bihari Aggarwal and Meenu Aggarwal in case FIR No.148 dated 12.8.2015 under Sections 406, 420, 120-B of the Indian Penal Code, 1860 registered at Police Station Sadar Ludhiana, District Ludhiana.

Learned counsel for the petitioners contended that the allegations against the petitioners are that they have executed an agreement to sell in favour of the complainants on 10.5.2013 in respect of a plot measuring 3600 square yards and at the time of agreement, an amount of Rs.1.71 crore was given to them. The sale deed was required to be executed on 30.10.2013. He further submitted that the present case has been registered by the complainants by levelling allegations against the petitioners which are not only false but vague also. Learned counsel further submitted that it was in the knowledge of the complainants that the property in dispute was mortgaged with the bank. The complainants were required to pay another instalment of Rs.1.71 crore on 30.7.2013, but they did not pay the said amount and rather backed out from the agreement to sell. The complainants did not pay the balance amount despite repeated requests by the petitioners.

On the other hand, learned counsel for the complainants submits that in fact, it was never in the knowledge of the complainants that the property for which the agreement to sell was executed was subject to mortgage with the bank. Rather the complainants have been cheated, as an amount of Rs.1.71 crore was paid to the petitioners on 30.5.2013, but neither the sale deed was executed in respect of the plot in question nor the money was returned to the complainants. He further submitted that the petitioners have used the said amount paid by the complainants towards clearance of the bank loan.

I have heard learned counsel for the parties.

On 31.10.2015, this Court had adjourned the case on the request of learned counsel for the petitioners to seek instructions with regard to refund of the sale consideration i.e. Rs.1.71 crores taken by the petitioners, but the counsel for the petitioners is not in a position to make any statement with regard to refund of the aforesaid sale consideration.

This Court feels that the petitioners do not deserve the concession of anticipatory bail. Admittedly, the complainants have paid Rs.1.71 crore to the petitioners on 30.10.2013, as they were under *bona fide* belief that the petitioners shall execute the sale deed on the date fixed by the parties. But it came to their knowledge that the said plot is already subject to mortgage with the bank. It is admitted by the petitioners that the plot in question was mortgaged with the bank at the time when agreement was executed. Once the plot was mortgaged, the petitioners had no right to retain such a huge amount while executing the sale agreement, rather they should have executed the sale deed immediately thereafter. The petitioners rather utilized Rs.1.71 crore towards their bank liabilities. The complainants have been divested with such a huge amount whereas the petitioners have utilized the said amount towards settlement of their bank dues.

The provisions of Section 438 CrPC are intended to protect the people from a process which may suggest abuse of law, but in the case in hand, the petitioners have taken huge amount of

Rs.1.71 from the complainants and have utilized the same towards settlement of their bank dues without executing the sale deed.

In this view of the matter, I find no reason to admit the petitioner in anticipatory bail.

Accordingly, the present petition is dismissed.

However, it is made clear that the observations made here-in-above shall not be construed any expression on the merits of the case. The trial Court shall decide the case on the basis of evidence as available on record.

November 03, 2015
AK

(HARI PAL VERMA)
JUDGE