

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl.Misc.No.M-4010 of 2015(O&M)

Date of Decision : 31.07.2015

Gunjan Bagga

....Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. R.S.Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate for the petitioner

Mr. Anmol Malik, AAG, Haryana

Mr. Manoj Bajaj, Advocate for complainant

MAHESH GROVER, J.

The petitioner prays for grant of pre-arrest bail in terms of Section 438 Cr.P.C in case FIR no. 11 dated 10.1.2015 registered under Sections 420, 406, 506, 120-B IPC at Police Station Central Faridabad, District Faridabad.

The facts would indicate that one Pankaj Rastogi was owner of a residential flat regarding which he had entered into an agreement to sell in the year 2013 with the complainant. Instead of concluding that transaction, he sold the flat to the petitioner for a sum of Rs. 1.62 crores. This flat was mortgaged with the Bank and an amount of Rs.52 lacs was paid by the petitioner by way of cheques to satisfy the Bank. Thereafter the flat was transferred in the name of the petitioner on an application moved by Pankaj Rastogi the owner of the property. It is thereafter that FIR has been registered against the petitioner alleging collusion with Pankaj Rastogi in executing fraudulent sale by undervaluing the property. It is alleged that

only Rs.52 lacs were paid to the Bank and no amount was paid to Pankaj Rastogi.

It is further alleged that on account of this collusion the complainant stands defrauded.

The petitioner in turn has lodged an FIR against the complainant and the owner of the flat i.e Pankaj Rastogi on the premise that it is he who has been duped into a sale where the earlier agreement to sell was not disclosed to him.

Learned counsel for the respondents opposed the prayer for bail on the ground that there was a collusion between the owner of the flat and the petitioner and ironically almost a similar argument has been raised by learned counsel for the petitioner alleging false implication at the behest of the owner of the flat.

This Court had granted interim protection to the petitioner on 6.2.2015 pursuant to which, undisputedly he has joined investigation. Learned counsel for the State opposes prayer primarily on the ground that petitioner has been unable to show the source of money paid to Pankaj Rastogi. They have stated that except for Rs.52 lacs which was paid by way of cheque the other amount of more than Rs. 1 crore remains unexplained.

In the considered view of this Court, if that be so then it would be the taxation authorities who would do well to look into this aspect of the matter but the complainant by way of this FIR alleging collusion to defeat his sale cannot be permitted to enforce the arrest of the petitioner in the given set of circumstances, If the amount has not been paid to the owner of the flat then it is he alone who could make a grievance of it and if the amount remains unexplained then the State authorities can certainly look

into this aspect and after establishing it take action against the petitioner in accordance with law. For the time being there does not seem to be any impediment in the way of the petitioner to be protected from arrest. Consequently, instant petition is accepted. Interim directions dated 6.2.2015 are hereby made absolute, however subject to the condition that the petitioner continues to comply with the provisions of Section 438(2) Cr.P.C.

July 31, 2015
rekha

(Mahesh Grover)
Judge