

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M No.43322 of 2015(O&M)

Date of Decision:-12.05.2016

Gurmukh Singh & Ors.

.....Petitioners.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Ms. Loveleen Dhaliwal, Advocate for the Petitioner.

Mr. Yashwinder Singh Deputy Advocate General, Haryana
assisted by ASI Jitender Singh.

Mr. Ashish Aggarwal, Senior Advocate assisted by
Ms. Ritu Pathak, Advocate for the Complainant.

JASWANT SINGH, J.

CRM No.15266 of 2016

Complainant has moved the instant miscellaneous application for placing on record documents Annexures C-1 to C-5 (Colly) and further seeking exemption from filing certified copies thereof.

For the reasons stated in the application, the same is allowed and documents Annexures C-1 to C-5 are taken on record.

CRM-M No.43322 of 2015

Prayer is under Section 438 Cr.PC for grant of anticipatory bail on behalf of five accused persons in case FIR No.622 dated 28.11.2014 for offences punishable under Sections 420, 406, 467, 468, 471, 506 and 120-B

of Indian Penal Code registered with Police Station Gharaunda, District Karnal.

Five petitioners-accused, namely, Gurmukh Singh (petitioner no.1), Harvinder Singh (petitioner no.2), Bhagwant Singh (petitioner no.3), Surender Kaur (petitioner no.4) and Ranjit Singh (petitioner no.5) along with non applicant/co-accused Guriqbal Singh claiming themselves to be exclusive owner of land measuring 164 Kanals 09 marlas (about 20-1/2 acres) situated at Pana Makhu, Village Moonak, Tehsil Ballah, District Karnal entered into written agreement to sell dated 17.08.2013 in furtherance of an earlier oral agreement to sell dated 6.6.2013 through two co-accused property dealers Manmohan Singh and Nasir with the complainant-Ravinder Singh. It was claimed that the said named six persons were owner in possession of the entire mentioned land and there were no other co-sharers, which was also free from all encumbrances. The sale price was at the rate of Rs.9,70,000/- per acre and a sum of Rs.2 Crores was received as earnest money. The target date for execution was 06.12.2013.

The allegations in the aforesaid FIR made by the complainant Ravinder Singh are that the owners/sellers had misrepresented that there were no other co-sharers and they were the owners in possession of the entire land in question as it was found that there were outstanding loans raised from the financial institutions by mortgaging the said land. It was found that there were more co-sharers who had not agreed to sell the land. The land actually owned by the named accused owners was also found to be less than recited and claimed. Thus, the accused party in connivance with each other had cheated the complainant for a sum of Rs.2 Crores as the sale

deed in terms of the agreement to sell could not be executed.

Learned Counsel for the Petitioner has argued that the dispute is of civil nature and no offence is made out as it is the complainant who has backed out of his part of the contract. It is further argued that till the target date of sale deed the entire loans have been repaid and there was no outstanding charge over the said property. It is also submitted that as per the details submitted the petitioners and other family members are owners in possession of the land measuring more than 20-1/2 acres of land and, therefore, entire case set up by the complainant is motivated in order to escape the liability of forfeiture of the earnest money in terms of the contract. It is further submitted that pursuant to the directions passed by this Court, petitioners have joined the investigation and nothing more is to be recovered from them.

Learned State Counsel assisted by ASI Jitender Singh states that the affidavit of DSP concerned has been filed wherein it has been stated that the allegations of the complainant were investigated and it was found that the petitioners are owners of land in question only to the extent of 15 acres but they fraudulently entered into agreement to sell 20-1/2 acres of land to the complainant. The other land owners have stated that the petitioners were never authorised to sell their shares of land and are also not willing to sell their share. Thus, it is submitted that the custodial interrogation of the petitioners is required to unearth the whole racket of executing the fraudulent transaction.

Learned Counsel for the complainant has argued that in the investigation land mentioned in the agreement o sell was found to have 14 co-sharers as per the record of the *Halqa Patwari* whereas there were only

six accused-signatories to the same. In the agreement to sell 164 Kanals 06 Marlas of land is stated to be written whereas in Khewat No.70, 133, 351, 989 mentioned in the agreement to sell (P-1) total land comes to be 118 Kanals & 04 Marlas. Thus, there is deficiency of 46 Kanals and 04 Marlas of land. Two of the co-sharers Nirmala Devi and Parnita Devi during investigation gave their statement that they do not wish to sell their land and their consent is being given by the accused Surinder Kaur regarding sale without any approval from them.

Counsel for the parties heard at length and perused the paper book with their able assistance.

It is admitted position that at the time of execution of agreement to sell the land in question was under mortgage against loans raised from financial institution, which concededly was not revealed to the complainant. It has also come in investigation from the record produced by *Halqa Patwari* before the court below that the petitioners were recorded as owners in possession of only 15 acres against 20-1/2 acres claimed in the agreement to sell. It has also come on record that there are more co-sharers than represented at the time of agreement to sell, whose signatures are not affixed in the agreement to sell and otherwise are not willing to sell their land.

Keeping in view the nature and gravity of offence, no case for grant of anticipatory bail to the petitioners is made out.

Dismissed.

(JASWANT SINGH)
JUDGE

May 12, 2016
Vinay