

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

(201)

CRM-M-5310-2015

Decided on: April 06, 2016.

Sat Narayan and another

.... Petitioners

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Ms. Baljit Mann, Advocate, for the petitioners.

Ms. Harpreet Kaur Athwal, DAG, Punjab.

Mr. Birender Singh Rana, Sr. Advocate, with
Mr. Ranvir Singh Arya, Advocate, for the complainant.

M.M.S. BEDI, J (ORAL)

Petitioners seek concession of pre-arrest bail in a case registered at the instance of Jagjit Singh alleging that the petitioners connived with each other and hatched a conspiracy to dupe the complainant. Petitioner No.1 allegedly entered into the agreement of sale regarding half share in two plots mentioned in agreement of sale Annexure P-3 dated 30.05.2011. The allegation of the complainant is that a total sum of Rs. 26 lacs has been received by petitioner No.1 for execution of sale deed in favour of the complainant claiming that the petitioners had a right to alienate the property on the basis of an agreement of sale dated 27.04.2011 executed by Lajpat Rai etc., original owners of the property.

As there appeared to be some chances of amicable settlement, time was granted to complainant and the petitioners to amicably resolve the dispute. Parties having not been able to compromise, the matter has been taken up on merits.

The allegation against the petitioners is that they had entered into an agreement of sale with Lajpat Rai etc. The said agreement stood cancelled. Having no right in the subject matter of the agreement of sale, petitioner No.1 duped the complainant and received a sum of Rs. 26 lacs as earnest money.

Learned counsel for the petitioners has vehemently contended that as a matter of fact, petitioner No.1 had received a sum of Rs. 16 lacs from the complainant with a clear understanding that he had a right to sell the property on the basis of the agreement of sale executed in his favour by the original owners of the property Lajpat Rai etc. It has been contended that the complainant has forged a receipt of Rs. 10 lacs which has been found so during course of investigation by an officer of the rank of DSP. It has been urged by counsel for the petitioners that petitioner No.1 is ready to return sum of Rs. 16 lacs received by the petitioners. It has also been submitted by counsel for the petitioners that petitioner No.1 being owner of the land which is adjacent to the land which is subject matter of the agreement of sale, is ready to transfer the property to the complainant by adjusting the amount paid by him as earnest money by transferring the land at the same rate on receipt of balance sale consideration.

Learned counsel for the complainant has intervened to oppose application for bail contending that as a matter of fact, a sum of Rs.26 lacs stand paid by the complainant and that the complainant has been cheated as the complainant was made to understand that the petitioners had an absolute right as owners to transfer the property whereas agreement of sale dated 27.04.2011 in favour of the petitioners stood cancelled.

I have heard learned counsel for the petitioners, learned counsel for the complainant as well as learned State counsel and gone through the police file and various reports regarding inquiries conducted in the matter.

Since the petitioners admit to have received sum of Rs. 16 lacs as earnest money and have made an attempt to show their bona fide by either returning the amount or alienating another property adjacent to the property which is subject matter of the agreement, which offer has not been accepted by counsel for the complainant, I am of the opinion that the circumstances of the present case are indicative of prima facie a combination of civil and criminal liability of the petitioners which is yet to be determined during course of litigation. However, striking a balance between the claim of the complainant and the admitted civil liability of the petitioners only to the extent of Rs. 16 lacs, in the interest of justice, I deem it appropriate to grant concession of pre-arrest bail to the petitioners as the petitioners have joined investigation and made an attempt for reconciliation.

Petition is allowed. It is ordered that in case of arrest of petitioners, they will be released on bail to the satisfaction of the arresting officer subject to the following conditions:

- (1) That the petitioners will join investigation as and when required;
- (2) petitioner No.1 will hand over a bank draft for Rs. 10 lacs in the name of the complainant. Bank draft for Rs. 10 lacs can be handed over by the investigating officer to the complainant without prejudice to the right of the parties to settle the dispute by litigation, or any settlement of the rights of the parties by other means; and
- (3) petitioners will not tamper with the evidence or hamper the investigation in any manner.

The investigating officer would be required to hand over the bank draft for Rs. 10 lacs to the complainant against a receipt and memo of recovery with an undertaking from the complainant that in case he is not able to establish his entitlement to the said amount at any stage, pursuant to any civil or criminal litigation, he would be liable to return the amount, without prejudice to the right of the petitioners, along with interest at the rate of 6% per annum.

Nothing said in this order will be deemed to be an expression of opinion regarding the liability of the petitioners to repay the amount.

In case, in any proceedings, it is finally held that the complainant is not entitled to the return of earnest money, the petitioners will be entitled to seek the refund of amount from the complainant.

(M.M.S. BEDI)
JUDGE

April 06, 2016
harsha