

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

Date of decision:- December 17, 2016

I) CRM No. M-5895 of 2016

JASVIR SINGH AND ANOTHERPETITIONERS..

VS.

STATE OF PUNJABRESPONDENT..

II) CRM-M-24178-2016

DEVINDER SINGHPETITIONER...

VS.

STATE OF PUNJABRESPONDENT..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Davinder Bir Singh, Advocate,
for the petitioner (in CRM-M-5895-2016).

Mr. D.S. Bhinder, Advocate,
for the petitioner (in CRM-M-24178-2016).

M. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, J. (Oral)

By virtue of this common judgment, this Court intends to dispose of two petitions bearing CRM Nos.M-5895 and 24178 of 2016 preferred by the petitioner(s), as these are out-come of one and the same FIR bearing No.198, dated 31.12.2015, under Sections 420 and 120-B IPC, Police Station Dehlon, District Ludhiana City, seeking pre-arrest bail, feeling apprehension of their arrest.

2. At the very outset of the arguments, learned State counsel on instructions from ASI Brinderjit Singh, Police Station Dehlon, District Ludhiana City submits that in compliance of separate orders dated 18.02.2016 and 25.07.2016 passed in CRM-M-5895-2016 and CRM-M-24178-2016 respectively, the petitioner(s) have already joined the investigation. However, it has been submitted that the petitioner(s) did not cooperate and have failed to get recovered the amount of ₹40 lacs, alleged to be paid as earnest money.

3. At this juncture, learned counsel for the complainant has also intervened and has submitted that in fact the sale deed was not got executed as the petitioner(s) were not in possession of the property for delivery thereof on the date of execution of the sale deed. Rather, the possession is stated to be with one Hoshiar Singh.

4. On a query put to learned counsel for the complainant that as to whether there is any reference with regard to the fact that the petitioner(s) are not in possession of the property in suit; he was unable to specifically show anything. It means, the possession lies with Hoshiar Singh is one of the grounds for non-execution of the sale deed. It is also emerged that neither any notice has been issued by the complainant to either of the petitioners with regard to the factum of possession nor any affidavit stated to have been got attested from the Sub-Registrar on the date stipulated for the execution and registration of sale deed has seen the light of the day. Thus, there is serious question with regard to the possession of the property as well as other grounds due to which, the sale deeds have not been got executed as per the terms and conditions of the agreement for sale.

Otherwise also, as per the terms and conditions of the agreement, if, the sale deed is not executed within the stipulated period, the amount paid as earnest money is presumed to be forfeited. Thus, if there is some dispute with regard to the recovery of amount, there are other number of ways/remedies available to the complainant to get recovered that amount. Similarly, on that ground, the relief sought by the petitioner(s) through instant petition(s) cannot be declined.

5. Taking into consideration the aforesaid aspects of the case but without expressing any opinion on the merits, both these petitions are allowed and orders dated 18.02.2016 and 25.07.2016 are made absolute and shall enure during the pendency of trial but subject to the conditions provided under Section 438 (2) Cr.P.C.

December 17, 2016
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No