

CRM-M-6431-2016

Date of Decision : 27.05.2016

Kewal Singh

.....Petitioner

versus

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI**Present:** Mr. G.S. Kaura, Advocate
for the petitioners.

Ms. Harpreet Kaur Athwal, DAG, Punjab.

Mr. Raman Mohinder Sharma, Advocate
for the complainant.**M.M.S. BEDI, JUDGE (ORAL)**

Petitioner seeks concession of pre arrest bail in a case registered at the instance of Malkit Deen alleging that the petitioner in connivance with other co-accused duped the complainant of a sum of Rs.38 lacs by entering into an agreement of sale on 29.08.2011 on payment of a sum of Rs.10 lacs to the petitioner as earnest money. Thereafter, on 13.03.2012 another agreement was entered into for the same land by making Rupinder Singh as partner of complainant in the purchase of land and another sum of Rs.15 lacs was paid to the petitioner. Thereafter, another sum of Rs.13 lacs was paid to the petitioner on 29.03.2012.

Learned counsel for the petitioner has submitted that the complainant had earlier filed a private complaint dated 08.03.2013 on the same allegations but it was dismissed and the revision petition was filed which is still pending before the Sessions Court.

I have heard learned counsel for the petitioner. On asking

of the Court as to why the petitioner has been falsely implicated in the case, counsel for the petitioner submits that as a matter of fact, the complainant has entered into an agreement of sale on payment of sum of Rs.10 lacs as earnest money but on account of complainant being not able to arrange money for purchasing the property, he did not come forward, as a result of which the sum of Rs. 10 lacs has been forfeited as per the terms of the agreement. It is admitted that the petitioner has now further sold the property. It has been denied that any other agreement of sale were executed on payment of additional sum of Rs. 15 or Rs.13 lacs on different occasions. It has been submitted that dismissal of the complaint will debar the present FIR.

I have gone through the order passed by the Judicial Magistrate First Class, Tohana, District Fatehabad, dismissing the private complaint of the complainant. The learned Magistrate has dismissed the complaint inter alia on the ground that the complainant has not been able to establish that he had obtained the money to pay earnest money to the petitioner by getting it from his mother-in-law who had allegedly sold her property. Whether the doubt regarding source of money available with the complainant was sufficient enough to dismiss the complaint, is yet to be determined by the revisional Court. The dismissal of the complaint as such will not debar the lodging of FIR especially, when the matter is inquired into, by the police.

Counsel for the petitioner has submitted that the story of the complainant is absolutely improbable as he has not taken any step to

enforce his civil rights to get the agreement specifically performed or to recover the amount by filing any suit for recovery. Counsel has also referred to report of DSP of Moonak, District Sangrur wherein allegations of the complainant were not found correct in an inquiry conducted on the complaint of the complainant.

Taking into consideration all the above said facts, this Court is of the opinion that there appears to be a controversy whether it is a sum of Rs. 10 lacs or it is Rs.38 lacs which have been given by the complainant to the petitioner pursuant to three agreements of sale mentioned hereinabove. But the fact remains that agreement of sale between the parties has been admitted. It is also the fact that the petitioner has further sold the property on receipt of sale consideration from other party. The liability of the petitioner appears to be a combination of civil and criminal liability. The complainant has got a right to proceed against the petitioner depending upon his capability to recover the amount or to enforce the agreement of sale or to launch criminal prosecution.

Striking a balance between the rights of the parties, it is a fit case where the liberty of the petitioner can be protected by granting him pre-arrest bail subject to simultaneously granting some relief to the complainant.

In the interest of justice, the petition is allowed and it is ordered that in case of arrest of petitioner, he shall be released on bail to the satisfaction of the arresting officer subject to the following

conditions:-

- 1) Petitioner will join investigation as and when required by the investigating officer.
- 2) Petitioner will not tamper with the evidence or hamper the investigation in any manner.
- 3) Petitioner will pay a sum of Rs.10 lacs in the shape of bank draft, in the name of the complainant to the investigating officer within a period of one month, that is, by 26.06.2016.
- 4) Petitioner will also not threaten the complainant in any manner.

It is ordered that in case of violation of any of the above said conditions, it will be open to the complainant or the prosecution agency to seek cancellation of this bail order.

This order will not tantamount to expression of any opinion regarding the extent of liability of any of the parties. It will be open to the complainant to enforce his other legal rights in accordance with law.

It will be open to the investigating officer to hand over the bank draft to the complainant subject to the final determination of the rights of the parties.

(M.M.S. BEDI)
JUDGE

27.05.2016
Neha