

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

**CRM-M No.10318 of 2017 (O&M)
Decided on: 28.09.2017**

Anand Kumar

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- None for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Karanvir Nanda, Advocate for the complainant.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.175 dated 05.06.2016 registered under Section 420 IPC at Police Station Sector 5, Panchkula.

Counsel for the complainant submits that vide order dated 01.02.2017, the Sessions Judge, Panchkula has cancelled the bail of the petitioner which was granted to him on 20.07.2016, on certain terms and conditions as mentioned in the said bail order. The operative part of the order dated 01.02.2017 reads as follows:-

“5. Record perused. Bail order dated 20.07.2016 shows that complainants Raghbir Chaudhary and Karan Chaudhary had suffered the statement to the effect that they had entered into settlement with the applicant-accused and as per that the applicant-accused shall transfer and hand over the possession of the SCFs in question to them within 45 days from date 20.07.2017, and as such they had no objection as to the release of accused on bail if he complied with the terms of the settlement.

Keeping in view the settlement arrived at between the parties, the applicant-accused was called from the jail and he had also suffered a statement that he had entered into a settlement with the complainants and as per settlement, he shall get SCF Nos.18 and 19, Mega Market at Sunny Enclave, Sector 125, Kharar, Mohali, transfer in the name of the complainants and also hand over the possession of the same to them. He also stated that he has received ₹ One crore from the complainants.

6. In view of the settlement arrived at between the parties, vide order dated 20.07.2016, applicant-accused was granted the concession of bail on furnishing his personal bonds in the sum of Rs. One Lac with two sureties in the like amount and on other usual terms and conditions. Liberty was also granted to the complainants that in case, the applicant-accused fails to comply with the undertaking as given by him, on the basis of which, he was given the aforesaid concession of bail, the complainants were given the liberty to seek cancellation of bail of the applicant.

7. When the respondent-accused failed to adhere to the conditions of bail order dated 20.07.2016, complainants were constrained to move the instant application for cancellation of bail. Accordingly, notice of the same was given to the respondent. In pursuance of the notice, proxy counsel had put in appearance on 14.12.2016 and he had submitted that the accused was ready to hand over the possession of the Showroom No.18 and 19, Mega Market at Sunny Enclave, Sector 125, Kharar, Mohali and 15-20 days time was sought for getting the sale deed registered in favour of the complainant and in view of no objection of counsel for complainants, 15-20 days time was given for doing the needful and thereafter, again on 11.01.2017, respondent-

accused himself appeared in the Court and suffered a statement and sought time till 25.01.2017, to fulfill his undertaking and also suffered the statement, failing the same his bail application may be cancelled. In view of the statement of respondent-accused, time was given to the respondent-accused to do the needful on or before 27.01.2017. Further on 27.01.2017, instead of complying with the settlement so arrived at with the complainants, the accused through his proxy counsel produced his medical certificate stating that accused had been advised bed rest for 5 days.

8. From the above facts and circumstances, it is amply clear that the respondent-accused has not complied with the conditions and direction of the Court, as contained in the bail order dated 20.07.2016, whereby bail was granted to the respondent-accused, subject to the condition that he shall fulfill the terms of settlement so arrived at between the complainants within the time frame. In the bail order, it was specifically mentioned that in case, the applicant-accused (herein respondent) failed to comply with the undertaking given by him in the Court on the basis of which, he was granted the concession of bail, complainants were at liberty to seek cancellation of the bail. Respondent-accused has not fulfilled the undertaking given by him, personally. Thus, it is a fit case, where the concession of bail so granted to him needs to be withdrawn. Accordingly, the application as moved by the complainants, for cancellation of bail granted to the respondent-accused stands allowed and bail so granted to the respondent-accused vide order dated 20.07.2016 stands cancelled. A copy of this order be sent to the learned trial Court for intimation and for further proceedings. Thereafter, file be tagged with the main case file.”

Counsel for the complainant further submits that the petitioner in identical circumstances relating to other FIRs has also approached this Court by way of filing CRM-M No.34840 of 2016 in which the anticipatory bail application filed by the petitioner was dismissed vide order dated 24.01.2017 and the same reads as follows:-

“Petitioner-Anand Kumar has filed this petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.158 dated 16.08.2016, registered at Police Station Dera Bassi, SAS Nagar (Mohali), under Sections 406, 420 and 120-B of Indian Penal Code.

Notice of motion has been issued.

Mr. Deep Singh, Asstt. Advocate General, Punjab, has put in appearance on behalf of the respondent-State and Mr. Karan Vir Nanda, Advocate, has put in appearance on behalf of the complainant and contested this petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that vide order dated 28.09.2016, passed by this Court, interim bail was granted to the petitioner with a direction to join the investigation. On the next date i.e. 11.11.2016, learned counsel for the petitioner informed the Court that the petitioner went to the police station to join the investigation but he was not joined in investigation by the Investigating Officer. On the contrary, learned State counsel has stated that the petitioner did not come present to join the investigation on the date fixed.

Thereafter, vide order dated 28.11.2016, the petitioner was again directed to join the investigation on 30.11.2016 with a specific condition that if the

Investigating Officer did not join him in investigation, then the petitioner can approach the learned Sub Divisional Judicial Magistrate, Dera Bassi and the case was adjourned to 13.12.2016.

On 13.12.2016, the petitioner again submitted before this Court that the Investigating Officer did not join him in investigation. Thereafter, this Court directed the petitioner to appear before learned Sub Divisional Judicial Magistrate, Dera Bassi on 19.12.2016 at 10:00 a.m. sharp and to move an application showing his willingness to join the investigation. Similarly, a direction was also given to the Investigating Officer to remain present before the concerned Court on scheduled date and time.

Today, learned State counsel informed this Court that the Investigating Officer appeared before the learned Sub Divisional Judicial Magistrate, Dera Bassi, in compliance of order passed by this Court, but the petitioner did not turn up.

Mr. Anshuman Sharma, Advocate, who has come present along with counsel for the petitioner, stated that he was with the petitioner on the date fixed, but as the other party has brought some engaged persons, therefore, the petitioner could not enter the Court room.

From the aforesaid discussion, it is clear that the petitioner instead of joining the investigation is making excuse on one pretext or the other and has not complied the orders passed by this Court. Therefore, he is not entitled to the benefit of anticipatory bail.

Accordingly, the anticipatory bail moved on behalf of the petitioner is dismissed.”

It is next contended by counsel for the complainant that in one more FIR, the petitioner has filed a petition before this Court i.e.

CRM-M No.44532 of 2016 for grant of anticipatory bail. The said petition was also dismissed by this Court vide order dated 24.04.2017.

The operative part of the said order is reproduced as follows:-

“This is third petition for grant of pre-arrest bail filed by the petitioner in a case which was registered at the instance of complainant Renuka Sanjay Thakur alleging that the petitioner along with co-accused had allured the complainant to invest in the real estate business. She entered into a buy-back agreement on August 4, 2014 with the petitioner in the name of Hanumanta Land Promoters Private Limited for purchase of 10 flats. The petitioner-accused took Rs.60 lacs from the complainant with a condition that if the possession of the flats is not handed over till February 5, 2015, then the complainant would be given back Rs.60 lacs with Rs.5.40 lacs as incentive. Due to the non-fulfillment of the condition of handing over of the possession, the complainant asked for return but she was given only Rs.20 lacs and has been duped of the remaining amount.

The petitioner after dismissal of his two petitions earlier, has filed the present petition raising a ground that as a matter of fact, the complainant had approached the petitioner in July 2014 for purchase of 10 flats and had issued few cheques. In para 6 of the petition, details of the cheques acquired and debited in the account of the complainant have been given. It is asserted by counsel for the petitioner that complainant has received a sum of Rs.69 lacs instead of Rs.60 lacs from the petitioner.

A document annexure P-6 has been filed to the effect that on the basis of some transactions, the petitioner now seeks to establish that it is a case of rendition of accounts between the parties as the petitioner has already repaid the entire amount received from the complainant.

The notice was again issued to the complainant. The affidavit and counter-affidavits are being filed before this Court. It will not be appropriate for this Court to enter into the dispute pertaining to the money transactions as a serious controversy appears to have arisen whether the amount paid by the petitioner was in lieu of some other transactions or the same is connected with the transaction of the flats in dispute.

During the course of arguments, State counsel informs that the petitioner is involved in few other cases and that he is a proclaimed offender in a case which is registered in another State.

I have heard counsel for the petitioner, State counsel as well as counsel for the complainant. A serious controversy appears to exist regarding petitioner having actually joined investigation. A clarification was sought from the complainant regarding the alleged excess payment having been received by her. She has made an endeavour to explain that the amount has not been received by her.

In view of the above circumstances, I do not find any extraordinary exceptional circumstances warranting the entertainment of the third petition for bail as no fresh grounds seem to have arisen for changing the opinion regarding the earlier dismissal of the petitions for pre-arrest bail.

No ground is made out for grant the concession of pre-arrest bail to the petitioner.

Dismissed.”

Counsel for the complainant has further submitted that at the time of issuance of notice of motion in the present petition, the petitioner has submitted that he is ready to compensate the complainant in terms of alternate property of similar value or even slightly more

than that. Later on, the case was adjourned on number of occasions, however, despite the assurance given by the petitioner, he has failed to offer any alternate property to the complainant.

Today again, there is no representation on behalf of the petitioner despite the case having been called out for the 3rd time.

Dismissed for non-prosecution.

(ARVIND SINGH SANGWAN)
JUDGE

28.09.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No