

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-16158 of 2015 (O&M)

Date of Decision : 25.07.2017

Avtar Singh Sandhu

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.S. Gurna, Advocate
for the petitioner.

Ms. Rajni Gupta, Sr. DAG, Punjab.

Mr. Naresh Jain, Advocate
for the complainant.

Surinder Gupta, J.

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No. 288 dated 05.12.2014 registered for offences punishable under Sections 406, 420, 465, 467, 468, 471 read with Section 120-B of Indian Penal Code (for short 'IPC'), at Police Station Dera Bassi, District SAS Nagar Mohali.

2. As per case of complainant, who is a music teacher, he was in need of Plot. One of his student, namely, Kamalpreet Singh told him that his grandfather, namely, Avtar Singh (petitioner) is having land at Shivalik Vihar, Village Madhopur, Dera Bassi and is willing to sell the plot. He alongwith Kamalpreet Singh went to petitioner, who showed him his land and deal for purchase of 711 sq. yard of land @ ₹9300/- per sq. yard was struck with the petitioner. On asking of petitioner, ₹10 lacs were paid as earnest money and thereafter, vide receipt dated 02.04.2014, he received another sum of ₹40 lacs. Thereafter, an agreement to sell dated 10.04.2014

was also executed and date for execution and registration of sale deed was fixed as 07.06.2014. On the stipulated date, the petitioner did not appear in the office of Sub-Registrar and thereafter, he kept on putting off the matter on one pretext or the other. Complainant even asked Kamalpreet Singh for getting the sale deed registered. Later on he came to know that petitioner-Avtar Singh and Kamalpreet Singh in connivance with each other committed fraud with him. On further enquiry, complainant found that the land agreed to be sold to complainant was also not owned by the petitioner. This land was in the name of Gurjit Kaur wife of Bikramjit Singh. Complainant again met petitioner and asked him to repay the money received by him or to get the sale deed executed, which he flatly refused. Complainant has alleged that he had invested his hard earned money, which was saving of his entire life for purchase of said plot. When complainant again approached petitioner, he asked him to talk to his son, namely, Baljit Singh, who also started putting off the matter on one pretext or the other.

3. The petitioner in this case is not denying the submission of complainant in FIR. On 03.07.2015, when this bail application was taken up after notice to State, learned counsel for the petitioner made submission as follows:-

“The accusation against the petitioner was that he had sold a plot to complainant Vinod Puri for a consideration of ₹50 lacs although he was not the owner of the said plot. Learned counsel for the petitioner submits that after registration of First Information Report, a compromise has taken place between the parties. In order to satisfy the claim of the complainant, the petitioner has given a cheque of ₹10

lacs, which has been encashed as per Annexures P2 and P3 and has transferred land measuring 711 square yards out of the land owned by him to the complainant by executing an agreement Annexure P4.”

4. Relying on submission of learned counsel for the petitioner, the petitioner was allowed interim bail. Compromise, copy of which has been placed on file as Annexure P-4, reads as follows:-

“.....a gathering of following respectables belonging to both the parties, convened today, on 11.12.2014, in which, Baljit Singh etc. have given their consent to repay the sum of ₹50 lac, received from Vinod Puri on account of earnest money, alongwith interest for ₹10 lac i.e. total sum of ₹60 lac. Baljit Singh has given a Cheque No 991301 dated 15.12.2014 for ₹10 lac, payable at State Bank of India, to Vinod Puri and as regard balance amount of ₹50 lac, Baljit Singh will get registered sale deed regarding his land measuring 2 bigha, situated at village Gholu Majra, in favour of Vinod Puri on 15.12.2014 as a matter of security against said amount of ₹50 lac and it has been decided to repay the said balance amount by 28.2.2015. On receipt of said amount of ₹50 lac Vinod Puri will get registered sale deed regarding land measuring 2 bigha in favour of Baljit Singh. In case Baljit Singh failed to repay the sum of ₹50 lac to Vinod Puri by 28.2.2015, in that event, Vinod Puri will become absolute owner of said land. This agreement is arrived at with mutual consent of both the parties, which is arrived at without any

pressure or partiality. On the date, when sale deed regarding said land got registered in favour of Vinod Puri, said Vinod Puri will submit an affidavit, duly attested, for quashing the above noted FIR. Till then, no proceeding may be conducted in instant case.”

5. On the next date i.e. 05.08.2015, complainant was impleaded as party and it was represented that complainant has received ₹10 lacs but the land measuring 711 sq. yards, which was agreed to be sold, is not existing at the spot. Learned counsel for the petitioner undertook to get the demarcation of the land done and to hand over possession of the same to complainant.

6. On 03.12.2015, it was specifically recorded in the interim order that petitioner had not fulfilled his undertaking and learned counsel for the petitioner took adjournment to seek instructions.

7. On 05.04.2016, learned counsel for the petitioner made submission, which was recorded as follows:-

“Learned counsel appearing for the petitioner would submit that the petitioner is ready and willing to honour the compromise appended at Annexure P-4 and as per which an amount of ₹60 lac was to be paid back to the complainant and out of which ₹10 lac has already been paid.

List on 05.05.2016.

Counsel undertakes that on the adjourned date a demand draft amounting to ₹6 lac in the name of the complainant would be produced in Court.

Interim protection to continue till the next date of

hearing.”

8. Draft of ₹6 lacs was brought and given to complainant and the petitioner undertook to bring draft of ₹5 lacs on 11.06.2016 on which date he handed over draft of ₹2 lacs to complainant and an undertaking was given to pay entire remaining amount alongwith further interest @ 12% per annum w.e.f. 28.02.2015 till the date of payment on or before 14.12.2016.

9. When the petition was taken up on 14.02.2017, the petitioner changed counsel, who took summons and pleaded that petitioner cannot be coerced to pay amount to complainant. The matter remained pending thereafter, and on 24.03.2017 an order was passed in this case, which reads as follows:-

“The question only is that with the petitioner having admitted that he entered into a compromise on account of the FIR registered against him, and thereafter he having undertaken before this Court to pay the amount remaining to be paid to the complainant, would he be entitled to continuation of the concession of anticipatory bail, with the commitment not honoured either in terms of the compromise, or in terms of the undertaking given before this Court.”

10. Learned counsel appearing for the petitioner sought last opportunity to take instructions from the petitioner with regard to payment to be made to complainant.

11. Above orders have been quoted in order to take note of the fact that petitioner had obtained interim orders and has been successful in seeking continuation of the same for a period of more than two years by giving one undertaking or the other. Admittedly, the land agreed to be sold

is not owned by the petitioner, who has some share in the joint land, which is yet to be partitioned and he is not in a position to put complainant in specific possession of the land agreed to be sold. The petitioner has repeatedly agreed to return money received by him from complainant with interest but except making payment of ₹18 lacs out of total amount ₹60 lacs with interest, no other payment has been made so far.

12. Mr. D.S. Gurna, Advocate, who has appeared for petitioner, has not been able to come up with any specific plea regarding the stand of petitioner. He has, however, not disputed that the petitioner is not in a position to sell specific portion of land agreed to be sold by him. At the same time, he submits that petitioner will pay money after selling his property but is not in a position to give any specific timeframe for the same. It is a case where the petitioner has apparently ditched an innocent buyer who had paid his hard earned ₹50 lacs to him towards sale price of land, he agreed to buy, but did not get either possession of plot or his money back despite compromise. Even petitioner has been misled this Court by making false representations.

13. Keeping in view facts and circumstance of this case and conduct of petitioner, I find no reason to exercise the discretionary power of this Court to extend the benefit of anticipatory bail to him.

Dismissed.

July 25, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No