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

CRM-M-30568-2017 (O&M)

Date of decision: 31.10.2017.

DALIP KUMAR

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Parminder Singh, Advocate,
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Brijender Kaushik, Advocate,
for the complainant.

HARI PAL VERMA, J.

CRM-27284-2017

Prayer in this application filed under Section 482 Cr.P.C. is
for placing on record documents Annexures P-4 to P-6.

For the reasons stated in the application, same is allowed
and the documents Annexures P-4 to P-6 are taken on record, subject to
all just exceptions.

CRM-M-30568-2017

Prayer in this petition filed under Section 438 Cr.P.C. is for
grant of anticipatory bail to the petitioner in case FIR No.362 dated
06.08.2017 under Sections 406, 420 IPC, registered at Police Station
Ambala City.

The allegation against the petitioner is that he committed fraud upon the complainant. He projected himself to be owner in possession of land comprised in Khata No.208, Khasra No.17//17/2/2, measuring 3 kanal 8 marlas in Patti Khurmpurmajri No.41, Tehsil and District Ambala. The petitioner stated to have purchased the said land by way of sale deed No.217, Book No.1, dated 15.04.2013. He agreed to sell ½ share of the above land measuring 1 kanal 14 marlas to the complainant for a sum of ₹29,58,000/- and received the entire payment as per agreement to sell dated 17.04.2013. Despite receipt of the said amount, he did not come forward to execute the sale deed. He sold the land by fabricating documents to other persons. Due to this, the land for which he was required to execute the sale deed was not available with him and thus failed to execute the sale deed in favour of complainant for the agreed land.

Learned counsel for the petitioner has argued that the amount of ₹29,58,000/-, as projected by the complainant, has not been paid to him. The signatures of the petitioner were obtained by the complainant on a blank paper fraudulently. In the absence of payment, the complainant has no right to get the sale deed executed in his favour. Further, the agreement to sell was executed on 17.04.2013, whereas the present FIR has been registered on 06.08.2017 and, therefore, the delay in itself is sufficient to admit the petitioner on anticipatory bail. He has further argued that the Tehsildar, Ambala has submitted a report which is based on a report of the retired Field Kanungo regarding demarcation

of the land in dispute. He produced a copy of the said report, which is taken on record.

On the other hand, learned counsel for the respondent-complainant has argued that in the agreement to sell dated 17.04.2013 signed by the petitioner as well as the witness and which was duly notarized, it has specifically been mentioned that the petitioner has received an amount of ₹29,58,000/- from the complainant for the sale land measuring 1 kanal 14 marlas (1020 square yards). However, out of the total land measuring 2040 square yards which, the petitioner received from Vishal Saini, he has already sold around 1165 square yards land to different persons. In land measuring 466 square yards he has carved out a *rasta* and thus he is left with only 409 square yards land. Thus petitioner had no land but still executed an agreement to sell dated 17.04.2013 and received ₹29,58,000/- from the complainant.

I have heard learned counsel for the parties.

Noticing the contention of the learned Counsel for the petitioner, that petitioner is ready to settle the dispute with the complainant, this court while staying the arrest of petitioner, vide order dated 30.08.2017, had referred the matter to the Mediation and Conciliation Centre of this Court and directed the parties to appear there on 05.09.2017. However, the mediation proceedings between the parties failed and, therefore, the case was sent back by the Mediation Centre to this Court.

Agreement to sell dated 17.04.2013 (Annexure P-2) shows that the same has been signed by the petitioner as well as one witness namely Sandeep. Moreover the said agreement to sell has been notarized on 17.04.2013. The plea of the petitioner that he has not received the amount cannot be accepted, as in the agreement itself, he has acknowledged the receipt of ₹29,58,000/- from the complainant. At this stage, the allegations made by the prosecution are to be seen. The report submitted by the Tehsildar as produced by the learned Counsel for petitioner, is of no relevance, when there is already an agreement signed by the parties. The petitioner has sold the land in excess of his ownership and received money without executing sale deed and possession of the agreed land.

In view of the fact that the allegations against the petitioner are serious in nature, no case for grant of anticipatory bail is made out.

Accordingly, present petition stands dismissed.

However, observations made hereinabove shall not be construed as an opinion on the merits of the case and the trial Court shall decide the same on the basis of available evidence.

(HARI PAL VERMA)
JUDGE

31.10.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No