

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No. 45587 of 2017

Date of decision: 11.12.2017

Ved Parkash

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.S.Bains, Advocate, for the petitioner.

Mr. A.S.Gill, Sr. DAG, Punjab.

Mr. Karan Vir Nanda, Advocate, for the complainant.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of anticipatory bail to the petitioner in case FIR No. 0251, dated 06.07.2017 under Sections 406, 420, 120-B IPC, registered at Police Station Zirakpur, District SAS Nagar (Mohali).

The brief facts of the case are that complainant-Himanshu Gaba filed a complaint dated 15.04.2017 to the police with the allegations that the petitioner has entered into an agreement to sell one DSS No. 253, Sector-20 Panchkula for a sale amount of Rs.2,25,00,000/- and an amount of Rs.40,00,000/- was paid as an earnest money on that date. Later on, an additional amount of Rs.10,00,000/- was paid to the wife of the petitioner on 04.11.2016. It is further stated in the FIR that later on, the complainant came to know that the petitioner has already entered into an earlier agreement to sell, regarding the said property with some other person and therefore, he has committed the offence under Sections 406, 420, 120-B of IPC by concealing the said agreement and inducing the complainant to part away Rs.40,00,000/-.

Counsel for the petitioner submits that the complainant and one Anil Kumar are property dealers and are hand in gloves with each other and in fact they have fabricated two agreements to sell in their favour. It is further submitted that as per the agreement to sell dated 30.04.2015 (Annexure P-2), which was allegedly entered into between the petitioner on one side and Anil Kumar and Narinder Kumar on the other side regarding the same property for an amount of Rs.2,10,00,000/-, it is shown that earnest money of Rs.60,00,000/- has been received by the petitioner. Similarly, in the second agreement dated 14.10.2016 (Anneuxre P-3), allegedly entered into between petitioner-Ved Parkash and complainant-Himanshu Gaba for Rs.2,25,00,000/-, an amount of Rs.40,00,000/ has been received by the petitioner.

Learned counsel for the petitioner submits that a comparative perusal of these two agreements shows that these are prepared on printed proforma, with a similar language and pages, on which, the entries have been made with pen giving details of the purchaser and the amount paid. Learned counsel for the petitioner further submits that in fact, the complainant has prepared this agreement on the asking of aforesaid Anil Kumar as both of them have some money dealing and in fact no amount has been paid to petitioner. Counsel for the petitioner further submits that Anil Kumar and Narinder Kumar have already filed a suit for symbolic possession by way of specific performance of agreement to sell dated 30.04.2015, which is pending before the Civil Court at Panchkula and the petitioner is contesting the same on the ground that the said agreement to sell is a fake document. It is also submitted that another suit is filed by one Satish Kumar claiming himself to be in possession of the property and the

same is also pending before the Civil Court at Panchkula. In both the suits, the applications filed under Order 39 Rule 1 and 2 read with Section 151 CPC claiming ad-interim injunction qua possession of the property in dispute, have been dismissed by the Civil Court. Lastly, it is argued on behalf of the petitioner that the wife of the petitioner, namely, Monika, who is also co-accused, has been granted regular bail vide order dated 18.09.2017 passed in CRM-M-32474 of 2017.

In reply, the learned State counsel, on instructions from the Investigating Officer as well as learned counsel for the complainant have opposed the prayer for bail on the ground that the petitioner has already entered into an agreement to sell dated 30.04.2015 with Anil Kumar and Narinder Kumar after obtaining NOC from HUDA and has received the earnest money from these persons who have, admittedly, filed a suit for specific performance against the petitioner. It is, thus, submitted that once the petitioner has entered into an agreement to sell, he was not competent to enter into another agreement to sell with complainant-Himanshu Gaba on a subsequent date i.e. 14.10.2016 and receive an amount of Rs. 40,00,000/- as earnest money. It was also submitted that the role of the wife of the petitioner is on a different footing and the petitioner, knowingly that he has entered into an earlier agreement to sell, has cheated the complainant by way of concealing the factum of first agreement and has coerced the petitioner to part away Rs.40,00,000/-.

In reply, counsel for the petitioner submits that there is no proof of payment of Rs.40,00,000/- to the petitioner and therefore, the agreement dated 14.10.2016 is a forged document.

After hearing counsel for the parties, I find no merit in the

present petition for the following reasons:-

(a) The case of the wife of the petitioner-Monika is on a different footing as the allegations against her are that, in pursuance to the agreement to sell dated 14.10.2016, she has received an additional amount of Rs.10,00,000/-by way of a receipt. Moreover, she was arrested and she was granted regular bail after two months of judicial custody. While granting bail to her, it was observed that, in fact, there is no privity of contract between complainant-Himanshu Gaba and wife of the petitioner as the allegation against her was only with regard to receipt of money whereas against the petitioner, the allegations are that he has entered into an agreement to sell with the complainant by concealing the earlier agreement to sell.

(b) The petitioner could not give a reasonable explanation as to why he has applied for NOC from HUDA for transferring the property in dispute in the name of Narinder Kumar and Anil Kumar, while raising an argument that agreement to sell in their favour is forged. They have already filed a suit for specific performance on the basis of first agreement to sell dated 30.04.2015.

(c) There is no mention in the subsequent agreement dated 14.10.2016 about the earlier agreement to sell and apparently, it was concealed from the complainant.

(d) The factum of payment of Rs.40,00,000/- by the complainant to the petitioner can be looked into during the investigation as the agreement to sell as well as the receipt is attested by two witnesses. Therefore, it is not a case where the anticipatory bail can be granted as it is difficult to accept, at this stage, the submissions of the petitioner that agreement to sell is a forged document as the petitioner has given no explanation under what circumstances the petitioner has signed the agreement to sell or the receipt.

In view of the seriousness of the allegations levelled against the

petitioner, custodial interrogation of the petitioner is required to investigate the element of fraud and therefore, the equitable relief of granting antitipatory bail to the petitioner is declined.

In view of the same, this petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

11.12.2017

Hemlata

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