

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

**CRL. MISC. No.M-9054 OF 2017 (O&M)
DATE OF DECISION : 17th AUGUST, 2017**

H. L. Kathuria & others

.... Petitioners

Versus

State of Haryana & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. G. S. Sidhu, Advocate for the petitioners.

Mrs. Tanisha Peshawaria, DAG Haryana.

Mr. Akshay Bhan, Senior Advocate with
Mr. Gaurav Mohanta, Advocate
for respondent No.2-complainant.

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A. B. CHAUDHARI, J.

The petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in FIR No.473 dated 23.09.2016 registered under Sections 406 & 420 IPC read with Section 34 IPC at Police Station Manesar, District Gurugram.

Heard learned counsel for the rival parties at length.

Learned counsel for the petitioners vehemently contended that the petitioners are entitled to anticipatory bail because the dispute in question is clearly of civil nature namely agreement of sale between the parties and the alleged non-performance thereof by the petitioners. He, therefore, submitted that the petitioners would be entitled to grant of bail particularly because suit for specific performance is pending in the Court. There is no need for custody of the petitioners. The transaction between the parties are of business transactions regarding exchange of money and therefore until and unless the civil suit is decided the filing of FIR was

not justified, as the use of criminal law cannot be made for recovery of money or specific performance.

Per contra, learned counsel for the State as well as the complainant vehemently opposed the petition for grant of anticipatory bail and submitted that the petitioners have cheated having admittedly obtained huge amount of ₹4,00,00,000/- from the complainant. The complainant had been left high and dry since the year 2011 when the money was taken by the petitioners. The petitioners ought to have returned at least the earnest money as the respondent-complainant is seriously suffering having paid a huge amount and having failed to obtain possession of property after executing the sale deed. Merely because the civil suit is pending that does not give licence to the petitioners to contend that no criminal law action could be taken. Accordingly the learned counsel for the complainant prayed for dismissal of the petition.

I have heard learned counsel for the rival parties at length.

It is true that the petitioners were granted ad-interim anticipatory bail by this court preventing their arrest. This court has to find out whether the prima facie case against the petitioners to extend the benefit of anticipatory bail, is made out or not. It is not in dispute that the petitioners had entered into agreement and obtained a huge sum of ₹4,00,00,000/- from the complainant, i.e. almost the 50% of the total consideration and thereafter without any rhyme or reason the petitioners have been avoiding to execute the sale deed and hand over the possession of the property to the complainant. The respondent having shelled out ₹4,00,00,000/- from his pocket, the intention, either not to execute the sale deed or return the earnest money from the year 2011, is clearly a

criminal intention and merely because the civil suit is pending before the Court, the petitioner cannot be extended a premium of grant of anticipatory bail and also have the huge amount of ₹4,00,00,000/- right from the year 2011.

It is in that context that this Court had asked the petitioners at least to deposit the entire amount of ₹4,00,00,000/- in the civil court to be invested in the fixed deposit till the final result of the civil suit. There would be no order for withdrawal. But, the counsel for the petitioners made it clear that the petitioners were not ready to pay back even the earnest amount of ₹4,00,00,000/-. It is thus clear that there is clear cut criminal intention on the part of the petitioners in not returning the money in the sum of ₹4,00,00,000/-, which had been received by them and is a matter of record.

In the result, I find that this court cannot put premium on the acts of the petitioners, by granting them anticipatory bail. In the result I make the following order:

ORDER

- (i) CRL. MISC. No.M-9054 OF 2017 is dismissed.
- (ii) Order dated 24.04.2017 is vacated.

17th AUGUST, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*