

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

CRL. MISC. No.M-9339 OF 2017
DATE OF DECISION : 5TH JULY, 2017

Radhey Shyam

.... **Petitioner**

Versus

State of Haryana & another

.... **Respondents**

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

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Present : Mr. H. P. S. Ghuman, Advocate for the petitioner.
 Mr. Chetan Sharma, Assistant Advocate General, Haryana.
 Mr. Akshay Kumar, Advocate for respondent No.2.

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A. B. CHAUDHARI, J.

1. The petitioner has filed the present petition under Section 439 Cr.P.C. challenging the order dated 27.06.2016 (Annexure P-8) in FIR No.599 dated 25.09.2015 registered under Sections 420, 467, 468, & 120-B IPC, at Police Station Samalkha, District Panipat and also prayed for setting aside of order dated 13.12.2016 (Annexure P-14) and has prayed for cancellation of regular bail granted to respondent No.2 by the trial Court i.e. learned Additional Sessions Judge, Panipat.

2. It is the case of the prosecution in the FIR that the present petitioner/complainant was approached by one Jagbir Singh in connivance with respondent No.2 with a view to purchase a plot measuring 1000 Square Yards situated near village Ugra Kheri standing in the name of Smt. Reena wife of respondent No.2. The petitioner relied upon the assurances of respondent No.2 and entered in to agreement for a total consideration @ ₹1871 per Square Yard and

also paid cash amount in the sum of ₹4,00,000/- (Rupees four lacs only) to respondent No.2. The date of registration fixed was 11.03.2015. Respondent No.2 again came to the petitioner and said that he was in need of ₹2,00,000/- (Rupees two lacs only) which the petitioner paid to him on 02.03.2015 and a receipt was obtained on the back of the agreement. Thus in all a total amount of ₹6,00,000/- (Rupees six lacs only) has been taken by respondent No.2. The balance amount was arranged by the petitioner with a view to get executed the sale deed in his favour. But then when he went to respondent No.2. asking him to execute the sale deed, respondent No.2 stated that it is to be done after demarcation of the land etc. and then took the entire consideration of ₹18,71,000/- (Rupees eighteen lacs and seventy one thousand only) but did not deliver the possession. There is an agreement dated 10.03.2015 (Annexure P- 3) in which there is a recital about the payment of ₹18,71,000/- (Rupees eighteen lacs and seventy one thousand only). Thereafter, respondent No.2 did not execute the sale deed though he had obtained the entire amount of consideration. The petitioner lodged FIR and respondent No.2 attempted to obtain anticipatory bail but his plea was turned down even by this Court. The respondent No.2 then was arrested on 13.06.2016 and he applied for regular bail and the trial Court granted regular bail on 27.06.2016 on the same date when the application was made. Thus the fact remains that the petitioner has lost his entire money and could not get the plot in his name. Apart from that the petitioner has averred that respondent No.2 started threatening the

petitioner to withdraw his complaint or he will eliminate him and his family members. He then submitted that on 29.06.2016 at 10.30 am respondent No.2 threatened him with threat to kill and then the petitioner had filed complaint (Annexure P- 2) on which no action has been taken by the police officers. The impugned order is challenged on various grounds that respondent No.2 has been misusing his liberty by threatening the petitioner and his family members. This Court had issued notice of motion to the respondents, including respondent No.2 for final disposal. After hearing counsel for the rival parties respondent No.2 was specifically told that when admittedly he had received entire money of ₹18,71,000/- (Rupees eighteen lacs and seventy one thousand only), there was no reason why the money should not be returned back to the petitioner if the respondent No.2 was not willing to execute the sale deed. Accordingly the matter was adjourned for May 22, 2017 to enable the learned counsel for respondent no.2 to take instructions. Thereafter the petition was heard on May 26, 2017 and the counsel for respondent No.2 filed application CRM No.18098 of 2017 along with affidavit which is taken on record.

3. The petition for cancellation of bail is being opposed on the ground that it would not be maintainable for assailing merits of the impugned order granting regular bail by the trial Court. There is further submission that there is one suit filed by one Raghbir Singh against respondent No.2 in relation to the same property and that is why it is not possible to execute the sale deed as the litigation with Raghbir Singh stands initiated. Though the civil suit filed by Raghbir

Singh was dismissed on 11.02.2016, the counsel for petitioner contended that remedy of the appeal etc. is still be available and therefore respondent No.2 is trying to mislead this Court that he was prevented in executing the sale deed in respect of the property which he had himself deliberately put in the litigation.

4. In support of the petition for cancellation of bail learned counsel for the petitioner argued that the application for regular bail was filed by respondent No.2 before the Sessions Court on 27.06.2016 and on the same date the learned trial Court allowed his bail application when his co-accused Jasbir remained in custody for four months. He then submitted that the order made by the trial Court, on merits, does not at all show any consideration to the fact that respondent No.2 has deliberately put the petitioner in financial crisis without disclosing the dispute with Raghbir Singh and received the entire amount of ₹18,71,000/- (Rupees eighteen lacs and seventy one thousand only). He, therefore, submitted that the trial Court ought to have considered the merits of the matter before ordering release of respondent No.2 on merits. He additionally submitted that respondent No.2 has been threatening the petitioner with dire consequences as reported by him to the police station officer. He, therefore, prayed for cancellation of regular bail granted to respondent No.2.

5. *Per contra*, learned counsel for respondent No.2 opposed the petition for cancellation of bail and submitted that the petition is not maintainable because there is no misconduct committed by respondent No.2 after grant of bail. The alleged threats, about which

the petitioner has allegedly made complaints, were never given as stated in reply affidavit by respondent No.2 and petitioner has thus cooked up story with ulterior motive. The learned counsel for respondent No.2, therefore, vehemently opposed the petition and submitted that there is no occasion to cancel the regular bail granted to respondent No.2.

6. I have heard learned counsel for the rival parties at length and have perused the entire record so also the order granting regular bail to the petitioner on merits. Perusal of the record and the documents filed by the respondent No.2 shows that Raghbir Singh filed a civil suit against respondent No.2 bearing Civil Suit No.159 of 2015 on 20.07.2009 for declaration of permanent injunction in respect of the suit property which has been dismissed recently and remedy of appeal is still available to him as contended by learned counsel for respondent No.2. However respondent No.2 fully knowing about the status of the property being under the litigation collected the entire amount from the petitioner which is reflected in the documents. In other words with a clear design respondent No.2 cheated the petitioner. While rejecting anticipatory bail, this Court has observed thus in its order.

10. Perusal of the report of the Local Commissioner clearly reveals that possession of the plot has not been delivered. Relevant extract of the report reads as under:

“.....Petitioner Bhim Singh identified the land in which barseen (green chari) is sown

and stated that plot of 1000 sq.yard has been given to the complainant from this land, however, the complainant denied this fact. In the meantime, various persons from the locality reached at the spot and they stated that they had purchased plots from petitioner Bhim Singh and had constructed their houses. They also stated that only a few persons have got executed the sale deed and the remaining persons have constructed their houses on the basis of full and final payment agreement with the petitioner. After this, the petitioner went away from the spot by saying to bring some documents and thereafter, he did not return back.”...

11. Thereafter, during the course of resumed hearing on 14.3.2016, statement of learned counsel appearing for the petitioner had been recorded that he would be ready and willing to get the sale-deed executed to facilitate transfer of title of 1000 Sq.Yds. plot in favour of the complainant. In the light of such statement, parties had been directed to appear before the Sub Registrar, Panipat on 21.3.2016 for execution of the sale-deed in favour of the complainant as a follow up

to the full and final agreement to sell dated 10.3.2015.

12. It so transpires that on 21.3.2016, the parties had come present in the office of Sub Registrar, Panipat. However, the sale-deed was not executed as the petitioner herein ostensibly was wanting a recital to be incorporated in the sale deed with regard to delivery of possession.

13. The facts and circumstances noticed hereinabove would, prima facie, indicate that the conduct of the petitioner is not above board. As per report of the Local Commissioner to which objections have not been filed by the petitioner, he has sold plots from a certain parcel of land on the basis of full and final agreements to sell. It is only in a few instances that the sale-deed has been got executed.

14. Allegations are a pointer towards innocent persons like the complainant being duped of their hard earned money on the pretext of selling plots carved out of a common pool of land and without their being any demarcation or execution of sale-deed.

7. When the notice of motion was issued by this Court full opportunity was given to respondent No.2 to return the entire money to the petitioner. However, he does not have any intention to return back

the money and to sell the suit property to the petitioner. The fact the amount was paid by the petitioner to respondent No.2 has been admitted. Accordingly the matter was adjourned. But then in the affidavit in reply there is no positive commitment that respondent No.2 would pay back the money received by him. Respondent No.2 has thus landed the petitioner in financial trouble. It is not easy for anyone to sustain such a burden of huge amount dishonestly collected by respondent No.2 from the petitioner with a specific design to cheat him. In my opinion, therefore, the impugned order passed by the learned Additional Sessions Judge granting regular bail without considering the pros and cons of the matter cannot be justified. After all, the complainant lost his hard earned money of ₹18.71 lacs to the petitioner who on the same day of filing regular bail application was released. It is the trite law that jurisprudence of grant of bail does not say that case of the complainant should be ignored and plea for bail of accused should always be favourably considered. Apart from that it is duly proved by the petitioner from the documents on record that respondent No.2 has been threatening the petitioner and his family members which is evident from the complaints (Annexures P-9 & P-10) made by the petitioner to the Senior Superintendent of Police, Panipat. Thus, there is a reason to believe that respondent No.2 has threatened the petitioner and his family members with threats of death. It is thus clear that respondent No.2 having taken the entire amount of ₹18,71,000/- (Rupees eighteen lacs and seventy one thousand only) from the petitioner has now restored to the tricks of threatening the

petitioner to withdraw the case/complaints filed by him. Such a course of action cannot be allowed as it would be encouraging such fraudulent people. It would be giving premium to him to grant bail.

8. The submissions made by learned counsel for respondent No.2 that this Court cannot examine the order on merits will have to be rejected in the light of the decision of Apex Court in the case of ***Brij Nandan Jaiswal versus Munna @ Munna Jaiswal and another, 2009(1) RCR (Criminal) 529*** and in particular par 7 thereof, which reads thus:

7. It is now a settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail. However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary.

9. Having fraudulently obtained huge sum from the petitioner, respondent No.2 cannot be allowed to contend that the

remedy of civil suit is available to petitioner, and not for cancellation of his bail.

10. In the result, I find that the impugned order granting regular bail, on merits, is clearly illegal and will have to be set aside and further for another reason that respondent No.2 has threatened the petitioner and his family members and respondent No.2 has become a danger to the petitioner and his family members, who have lost their valuable money.

11. In that view of the matter, I make the following order:

ORDER

- (i) CRL. MISC. No.M-9339 OF 2017 for cancellation of bail of respondent No.2 is allowed.
- (ii) Impugned order dated 27.06.2016 (Annexure P- 8) granting regular bail is held to be illegal and as such quashed and set aside.
- (iii) The respondent No.2-Bhim Singh shall surrender to the custody within a period of four weeks from today.

5TH JULY, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes</i>	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	<i>No</i>