

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Misc. No.M-10130 of 2017 (O&M)

Date of Decision: 20.02.2018

Vineet Chhabra

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. P.S. Ahluwalia, Advocate, for the petitioner.
Mr. Baljit Singh Virk, DAG, Punjab.
Mr. S.K. Nehra, Advocate, for the complainant.

Amol Rattan Singh, J. (Oral)

In this petition, the petitioner has sought the concession of anticipatory bail, he apprehending arrest pursuant to registration of FIR no.102 dated 22.02.2016 at Police Station Sector-5, Gurugram, alleging therein the commission of an offence punishable under Section 420 IPC.

Mr. Ahluwalia, learned counsel for the petitioner, submits that the complainant, Rajesh Dang and his nephew Lakshay Dang, entered into two agreements on 25.07.2015 with the petitioners' company (through the petitioner who is its Director), for sale of a property for a total consideration of Rs.1.44 crore, with the total amount of earnest money of Rs.99 lacs having been received by the petitioner on that very date itself, qua both the agreements.

As per the said agreements, copies of which have been annexed as Annexure P-2 and P-3 with the petition, the sale deed of the plot was to be executed on or before September 3, 2015, with clauses 3 and 4 of both

the agreements stating as follows:-

“3. That the last date for the completion of the bargain i.e. the execution of sale deed is fixed on or before 3rd September, 2015. Time is the essence of the present agreement to sell.

4. That the second party will pay the balance amount Rs.11,280,000/- (Rupees One Crore Twelve Lacs and eighty thousand only) to first party on the day of execution of sale deed i.e. 3.9.2015. The said payment will be made in advance, on proper receipt, enabling first party to clear the bank loan of sister concern M/s Shivam Steel Tubes and thereafter the first party will take NOC from the said bank i.e. M/s Allahabad Bank for execution of sale deed.”

Thus, as per the petitioner, firstly, time was the essence of the contract and secondly, the sale deed was to be executed upon the complainant and his nephew paying the petitioner an amount of Rs.1,12,80,000/-, to enable the petitioner/his company to redeem the mortgage that had been entered into qua the property with the Allahabad Bank.

It is the case of the petitioner that the aforesaid amount was never offered to be paid to him by the complainant or his nephew and eventually the date for execution of the sale deed was extended to 15.09.2015, which fact is not disputed by Mr. Nehra, learned counsel for the

complainant.

It is further the case of the petitioner, that even by 15.09.2015 the aforesaid amount of Rs.11,280,000/- was never ever offered to be paid by the complainant and consequently, the sale deed was not executed; the further contention being made that though initially the petitioner and the complainant both had remained present at the office of the Sub-Registrar concerned on 15.09.2015. However, as per the petitioner, the complainant left that office on 15.09.2015. The complainants' contention is that the petitioner got his presence marked before the Sub-Registrar on 16.09.2015, whereas the complainant was present on 15.09.2015 itself, with his presence duly marked before the Sub-Registrar).

Thereafter, the petitioner is stated to have got two legal notices issued to the complainant and his nephew on 17.09.2015, copies thereof having been annexed as Annexure P-5 (colly) with the petition.

Two replies are stated to have been given to the aforesaid legal notices (by the complainant and his nephew), both on 23.09.2018, copies of which have been annexed as Annexure P-6 (colly) with the petition.

Thereafter, the sale deed not having been executed in favour of the complainant and his nephew, the petitioner admittedly sold the property to one Laxmi Devi on 16.11.2015, vide a registered sale deed (copy Annexure P-9 with the petition).

Mr. Ahluwalia, learned counsel for the petitioner, submits that the pre-condition to execution of the sale deed in favour of the complainant

being payment of Rs.1,12,80,000/- to enable the petitioner to clear the loan obtained from Allahabad Bank against the property itself, and the complainant not having paid the said amount, the agreements stood nullified after 15.09.2015 in any case, thereby leaving the property unencumbered with the petitioner (though mortgaged) to enable him to sell it to any other person.

Mr. Nehra, learned counsel for the complainant, on the other hand, submits that firstly, not even a notice was issued by the petitioner to the complainant for payment of the aforesaid amount of Rs.1,12,80,000/- and therefore, with the complainant duly having remained present before the Sub-Registrar on 15.09.2015 to fulfill his part of the contract, the petitioner having sold the property in question to some other person, a fraud has been played upon the complainant and the FIR in question has been correctly registered and consequently, he is not entitled to the continuation of the concession of anticipatory bail already granted to him vide an order of this Court dated 24.03.2017. On query, however, he does not deny that no instrument is available with the complainant, to show that he had, on 15.09.2015, or at any time soon thereafter, offered to pay Rs.1,12,80,000/- to the petitioner, in terms of the agreement.

Mr. Baljit Singh Virk, learned Deputy Advocate General, Haryana, on instructions, submits that the report under Section 173 Cr.P.C.

has already been submitted to the competent Court by the investigating agency, arraigning the petitioner as an accused therein, with the petitioner having duly joined investigation as and when he was required to, (pursuant to interim bail granted to him) and therefore, the State has no objection to the order dated 24.03.2017 being made absolute.

It is necessary to notice here that upon the petitioner having appeared before the trial Court, he applied for 'regular bail' under Section 439 Cr.P.C. also. He has been admitted to interim bail by that Court, pending the final order to be passed in this petition, he already being on interim bail in this petition filed under Section 438 Cr.P.C.

Having considered the entire matter, though Mr. Nehra has relied upon a judgment of the Supreme Court in **Rukmani Mahato v. The State of Jharkhand** in SLP (Crl) no.2411 of 2016 on 03.08.2017, to submit that the trial Court in fact should not have admitted the petitioner to interim bail under Section 439 Cr.P.C., in my opinion that question itself is rendered redundant because the petitioner would be entitled to bail in any case even in the aforesaid circumstances as have been enumerated herein above.

Since the present petition is only one seeking anticipatory bail, nothing further is stated by this Court on the merits of the case, which would be gone into by the trial court on the basis of evidence led; however, keeping in view the circumstances enumerated above and the fact that the petitioner duly joined investigation after he was admitted to interim bail and

the 'challan' having now been presented to the competent Court, with the petitioner having filed a petition/application under Section 439 Cr.P.C, I see no reason to not make the order dated 24.03.2017 absolute, qua the present petition filed under Section 438 Cr.P.C., it actually having been rendered infructuous.

Consequently, the present petition is allowed and the order dated 24.03.2017 is made absolute.

(AMOL RATTAN SINGH)
JUDGE

20.02.2018
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Whether reasoned/speaking: Yes
Whether reportable: no