

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

CRM-M-17438-2016

Date of Decision: March 13, 2018

Anil Jain

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Rohit Kapoor, Advocate for the Petitioner.

Ms. Rajni Gupta, Sr. D.A.G. Punjab.

Mr. Sunil K. Nehra, Advocate for the complainant.

SUDIP AHLUWALIA, J.

This is an Application for Anticipatory Bail under Section 438 Cr.PC on behalf of Petitioner/accused Anil Jain in FIR No.5 dated 13.04.2016, registered at NRI Police Station Jagraon, District Ludhiana under Sections 420 and 120-B of the IPC.

2. In a nut-shell, the allegations contained in the FIR may be summarized to the effect that originally, there was an Agreement of Sale between the complainant Makhan Singh and his brother Kuldeep Singh in respect of their land situated in village Raikot, which however, could not fructify as the proposed vendee namely 'Jindal Land Promoters, Nabha' was

unable to purchase the land due to financial constraints caused by inflationary in market pressures. They consequently settled the Written Deed on 23.6.2015 by virtue of which, the complainant Makhan Singh was allowed to retain the earlier earnest amount apart from 11 Plots of land measuring 5 Kanals 11 Marlas 2 Sarsai from the original property, which was located in Plot Nos. 1, 3, 14, 27, 28, 29, 35, 36, 37, 38 and 39 situated at Shanti Enclave, Raikot, and the aforesaid Plots on the same day were got registered in the name of accused Bhupinder Singh and Dinesh Jain as well as the present Petitioner, which itself was in pursuance of the Written Deed of Settlement between the complainant and Jindal Land Promoters by way of three Sale Deeds bearing Vasika Nos. 686, 687 and 688 respectively of the same date. The consideration price of the land purchased by Bhupinder Singh and the present Petitioner as mentioned in the Agreement dated 23.5.2016 (Annexure P11) was an amount of Rs.1,58,00,000/- only, which was ostensibly paid by way of two Cheques for Rs.8,00,000/- and Rs.1,50,00,000/- issued by the present Petitioner which were both however, Post dated by six months and would have been encashable only on the 25th of December, 2015. When the same were presented for encashment by the complainant after the due dates, they were both dishonoured due to insufficiency of funds. The complainant therefore, lodged the FIR in which he contended that in this manner he had been cheated by the vendees, who took his land without paying the agreed consideration price.

3. On the other hand, contention of the Petitioner is that he never acquired the said land at any stage, and the same still continues to be

retained by the complainant. His further case is that the cheques issued by him were only for the purpose of security to ensure that due payments would be made by the actual vendee namely Bhupinder Singh co-accused.

4. It may be mentioned that the other co-accused in the case have been granted Anticipatory Bail by this Court in their respective separate Applications, since according to the FIR itself, they themselves had not made any payment nor were signatories to either of the cheques issued to the complainant. At this point, it would be appropriate to revert back to the earlier Order passed by this Court on 31.07.2017 in which, it had been observed inter-alia -

“In CRM-M No.17005 of 2016 and CRM-M No.18356 of 2016, interim bails of the co-accused persons, namely, Bhupinder Singh and Dinesh Jain have been confirmed basically for the reason that they were not signatories to any of the cheques issued to the complainant.

To that extent the present petitioner stands on a different footing from Bhupinder Singh and Dinesh Jain, as admittedly the post dated cheques (subsequently dishonoured) were issued by him. From the agreement dated 23rd June, 2015, it is seen that the present petitioner was one of the three persons jointly constituting the second party/transferees to the agreement with the complainant, notwithstanding the fact that no actual deed of conveyance was executed in his personal name. In spite of that he issued the cheques for the lands transferred to other two persons, who are petitioners in CRM-M No.17005 of 2016 and CRM-M No.18356 of 2016.

In the given circumstances, this Court is disinclined to accept the submission raised on behalf of the present petitioner that he was not at all involved with the actual transaction and had only issued the cheques in question by way of security on

behalf of the actual transferees. If that were so, he ought not to have been included among the list of parties, constituting the party No.2 jointly to the agreement dated 23rd June, 2015.

Faced with this, learned counsel for the petitioner seeks an opportunity to enable his client to either placate the complainant by negotiations, or to otherwise resort to appropriate steps against the co-accused persons, who according to him had taken him for a ride in the matter of cheating/inducement for issuance of the subsequently dishonoured cheques.”

5. Subsequent thereto, the Petitioner has been unable to resolve the dispute with the complainant, who insists that he has been cheated, but the Petitioner is reported to have separately lodged his own FIRs against the other co-accused persons who are alleged to have duped and induced him for the purpose of delivering the security cheques.

6. It is however, not disputed that the Petitioner has been a business partner of co-accused Bhupinder Singh, and therefore, his description as a joint vendee along with the said Bhupinder Singh in the concerned Agreement dated 23.06.2015 would thus appear to be logical in the given circumstances. The onus lies upon him to prove that the cheques issued by him were only as a measure of security, even though they were described to be actual consideration price in the concerned Agreement. Therefore, it is difficult to prima facie believe the Petitioner's own version. But even assuming that there is some truth to the same, the fact of matter remains that the agreed consideration price for the complainant remains unpaid for which, either the Petitioner alone or his partner/co-accused is also responsible in each case, and therefore, custodial interrogation would

certainly be called for to unravel the truth regarding the actual internal dealings between them, for determining their respective shares of culpability in the transaction.

7. For the above reasons, the present Application for Anticipatory Bail is dismissed.

8. Further, the State Authorities are granted liberty to approach the Court for cancellation of the similar bail granted to the co-accused person(s) if so warranted on the basis of any fresh material that might have been or may be collected by them during investigation.

March 13, 2018
AS

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No