

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

CRM-M-24595-2017

Date of decision: 27.02.2018

Ramesh Kumar

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. R.S. Chahal, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. J.S. Thind, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.785 dated 06.12.2016 under Sections 406, 420, 506, 34 IPC, registered at Police Station Civil Lines Hisar, District Hisar.

Brief facts of the case are that on an application given by complainant Kanshi Ram, the aforesaid FIR was registered with the allegations that in the year 2011, Inder Gujjar, Rohtash and Ramesh came to him. Rohtash and Inder Gujjar are related to each other being cousin brothers. Co-accused Inder Gujjar offered sale of his 160 kanal 8.5 marlas of land, which he allegedly

purchased on 09.10.2007 vide a registered sale deed and later on, sold the same in favour of Ramesh vide sale deed dated 16.02.2011. The accused persons had shown to the complainant, copy of mutation No.1826, vasika No.6393 in their favour along with revenue record i.e. jamabandi for the year 2007. The complaint went to Fatehabad and entered into an agreement to purchase the land on 21.10.2011 and paid an amount of Rs.42 lacs to Inder Gujjar and Ramesh, in presence of one Dharambir and Rohtash, who are also relatives of Inder Gujjar. Thereafter, on 18.02.2012, he gave additional amount of Rs.5.50 lacs to them in presence of witnesses and later on gave another amount of Rs.17 lacs on 25.05.2012 in presence of witnesses and thus, he had paid a total amount of Rs.64.50 lacs. Later on, the accused persons failed to get the sale deed executed and did not give the money back. The petitioner came to know that by preparing the false documents, they have played fraud and cheated the complainant, as they were not owner of the land.

Learned senior counsel for the petitioner has submitted that it is a case of civil nature and the complainant has never filed any suit for possession by way of specific performance and after a long delay, has got the present FIR registered just to give the civil dispute, a colour of criminal litigation. Learned senior counsel for the petitioner, while relying upon the agreement between the parties dated 21.10.2011 (Annexure P-1), has submitted that it is mentioned therein that on receiving an amount of Rs.47.50 lacs, possession of the land was handed over to the complainant and therefore, the petitioner has not committed any offence.

In reply, learned State counsel, on instructions from ASI Ramphal, has opposed the prayer for bail on the ground that despite the fact that vide

order dated 13.07.2017, the petitioner was granted interim protection subject to abide by the conditions as specified under Section 438 (2) Cr.P.C. and after availing number of dates, he has failed to join the investigation. It is further submitted that at the time when the notice of motion was issued on 13.07.2017, counsel for the petitioner submitted that the petitioner is ready and willing to execute and get the sale deed registered in favour of the complainant and on this premise, this Court has granted him interim protection, however, later on the petitioner moved an application before this Court for withdrawing the aforesaid undertaking given by him that he is ready to execute the sale deed in favour of the complainant and the petitioner never joined the investigation.

Learned counsel for the complainant-respondent No.2 has submitted that while entering into agreement to sell (Annexure P-1), it is stated that the title of the property in dispute is free from all encumbrances and believing the same to be correct, he entered into an agreement to purchase from the petitioner. However, later on it came to notice of the complainant that the sale deed dated 09.10.2007 in favour of accused Inder Gujjar, was challenged by the original owner Mahender, who is stated to be a person of unsound mind and civil Court has set aside the said sale deed. The lower appellate Court upheld the said judgment and the matter is pending in a Regular Second Appeal before this Court. All these facts were concealed by the petitioner specially accused Ramesh, who is first cousin of Inder Gujjar, who executed a sale deed dated 21.10.2011, in favour of his cousin brother co-accused Ramesh on 21.10.2011 just to frustrate the proceedings of civil suit.

Learned counsel for the complainant has further submitted that the petitioner by giving an undertaking before this Court that he is ready to get the

sale deed executed, knowingly well that he is not owner of the property in dispute and there is a civil Court decree against him and co-accused Inder Gujar, later on, resiled from the said statement made at bar before this Court, as he was neither owner nor was in a position to execute the sale deed on the date when the order dated 13.07.2017 granting interim protection to the petitioner was passed. Counsel for the petitioner has also submitted that on the date, when the agreement to sell was executed in favour of the complainant, both Inder Gujar and Ramesh were not owners of the property in dispute, as the sale deed in favour of Inder Gujar was already set aside by the Civil Court and therefore, the subsequent sale deed dated 16.02.2011 is deemed to be null and void and knowingly well that the petitioner Ramesh was not the owner of the property, had induced the complainant to part away a huge amount of Rs.47.50 lacs and has cheated the complainant. It is further submitted that there was no occasion for the complainant to file suit for possession by way of specific performance, as the petitioner was not owner of the property in dispute and rather has cheated the complainant.

After hearing learned counsel for the parties, I find no merit in the present petition.

It is not disputed that the petitioner Ramesh, on the date of agreement to sell dated 21.10.2011, was not holding any title/ownership of the land, which he agreed to sell to the complainant and therefore, by misrepresenting and by way of cheating, he induced the complainant to part away with Rs.47.50 lacs under the garb of agreement to sell.

Even otherwise, the petitioner by making a wrong statement on 13.07.2017 that he is ready and willing to execute and get the sale deed

registered in favour of the complainant knowingly well that he was not the owner of the property, obtained interim bail subject to abiding by the conditions envisaged under Section 438 (2) Cr.P.C. Learned State counsel has also stated at bar, on instructions from the Investigating Officer, that the petitioner was not the owner of the property.

In view of the above, I find no ground to exercise the discretionary powers for granting the interim bail in favour of the petitioner.

Dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

27.02.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No