

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

**CRM-M No.40715 of 2017 (O&M)
Decided on: 12.09.2018**

Shamsher Singh and others

....Petitioners

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Arvind Thakur, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. P.P.S. Tung, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of anticipatory bail to the petitioners in FIR No.119 dated 21.09.2017 registered under Sections 420 and 120-B of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Barnala, District Barnala.

Counsel for the petitioners has submitted that as per the allegations in the FIR, petitioner No.1 – Shamsher Singh has entered into agreement to sell with the complainant – Meeto Kaur whereas petitioner No.2 – Bhola Singh is the nephew of said Meeto Kaur and petitioner No.3 – Teja Singh is the father-in-law of petitioner No.2. It is further submitted that as per the allegations in the FIR, petitioners No.2 and 3, who are in a dominating position being the close relative of the complainant – Meeto Kaur, who was an illiterate lady, have

fraudulently entered into an agreement to sell, without making any payment.

Counsel for the petitioners has further submitted that in pursuance to the interim order dated 16.11.2017 as well as 04.05.2018, the petitioners have joined the investigation and they are co-operating with the Investigating Officer. It is further submitted that, in fact, petitioner No.1 has also obtained a loan and advance against the agriculture limit for the purpose of payment against the agreement to sell. It is also submitted that the stipulated date in the agreement to sell dated 01.06.2012, was later on extended and thereafter, the petitioners have filed a suit for specific performance on 19.09.2014 and the same is pending, though at one point of time, it was dismissed for non-prosecution and the application for restoration is moved by petitioner No.1 and in the intervening period, since the complainant – Meeto Kaur had died on 20.05.2018, another application to implead her legal representatives is also filed and the same is now pending for 29.09.2018, therefore, it will be for the Civil Court to decide whether the agreement to sell was entered into between the parties of their own free will or under any coercion or duress.

Counsel for the petitioners has further argued that even on an earlier occasion, when a complaint was given to the Superintendent of Police, an enquiry was conducted and in the enquiry report dated 24.09.2014, it was found that it is a case of civil dispute and thereafter, after a period of 02 years, the present FIR was registered.

Counsel for the petitioners has also submitted that even subsequently, vide a sale deed dated 01.12.2017, the complainant has

further sold the entire land for an amount of Rs.62 lacs to third party and it is not the case of the complainant that the possession of the land was ever handed over to the petitioners.

Counsel for the State, on instructions from ASI Hakam Singh, assisted by counsel for the complainant has, however, submitted that there are specific allegations in the FIR that the accused persons, who are in close relationship with the complainant – Meeto Kaur, have got the disputed agreement to sell executed without making any payment to her.

Counsel for the State has further relied upon the affidavit of the Investigating Officer dated 30.05.2018 to submit that though all the 03 petitioners have submitted a proof that they were having liquidated amount of Rs.70,52,533.53 paisa but they could not give any proof regarding payment of Rs.65 lacs to the complainant.

Counsel for the State has further argued that by taking the advantage of being close relative of the complainant, petitioners No.2 and 3 have obtained a false and forged agreement to sell.

In reply, counsel for the petitioners has argued that since the matter is *sub judice* before the Civil Court, the factum of readiness and willingness as well as the payment of amount can be proved by leading the evidence and subsequently, the property has already been sold to a third party.

Without commenting anything further in the case, considering the fact that the parties are litigating with regard to their respective rights before the Civil Court, where the petitioners have to prove that they have made the payment in pursuance to the agreement

to sell to the complainant and also considering the fact that subsequently, the complainant has further sold the property to a third party on 01.12.2017 and in view of the well settled principle of law that the dispute arising out of an agreement to sell is primarily a dispute of civil nature, the present petition is allowed and the interim bail granted to the petitioners vide order dated 06.11.2017 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

(ARVIND SINGH SANGWAN)
JUDGE

12.09.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No