

104.

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

CRM-M-43866-2018

Date of decision:05.10.2018.

TULSA DEVI

... Petitioner

versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.K. Trikha, Advocate, for the petitioner.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 439 (2) of the Code of Criminal Procedure, 1973 is for cancellation of anticipatory bail granted to respondents No.2 and 3 by learned Additional Sessions Judge, Hoshiarpur vide order dated 10.07.2018 (Annexure P-1) in case FIR No.59 dated 19.06.2018 under Section 420 IPC registered at Police Station Haryana, District Hoshiarpur.

The aforesaid FIR was registered at the behest of petitioner-Tulsa Devi that the accused-respondents No.2 and 3 had entered into an agreement to sell dated 17.11.2015 in respect of land measuring 38 kanals 4 marlas situated at Village Brokagarhi, District Hoshiarpur and the accused Saroop Kaur (respondent No.2) had received an earnest money of Rs.2,50,000/- from the complainant in the presence of the witnesses. On 09.12.2015, Saroop Kaur entered into another agreement with the complainant whereby Saroop Kaur had assured that she would sell her aforesaid land @ Rs.19,50,000/- per acre. The accused had taken another

date for execution/registration of sale deed was fixed as 09.06.2016. The accused received Rs.20 lakhs through RTGS on 27.10.2016 and on 02.12.2016, the complainant got deposited Rs.9,30,000/- in the account of the accused on the pretext that they would clear the loan amount of the land in deal so that they could get the sale deed registered, but the accused did not deposit the amount in the loan account. In this manner, the accused have cheated the complainant.

In the aforesaid FIR, respondents No.2 and 3 had filed a petition under Section 438 Cr.P.C. for grant of anticipatory bail before the learned Additional Sessions Judge, Hoshiarpur and vide order dated 06.07.2018, they were granted anticipatory bail, which was subsequently confirmed vide order dated 10.07.2018.

Learned counsel for the petitioner has argued that the respondents have succeeded in getting anticipatory bail by stating wrong facts before the court below, that the complainant party had failed to perform their part of the contract whereas statement of account of respondent No.2 clearly shows that it is the accused party who have failed to perform their part of the contract by mis-utilizing the amount of Rs.29,30,000/- as they have used the same for their personal expenses instead of depositing the same into the loan account standing towards the land in dispute. Respondents have not honoured the agreement to sell after receiving the amount of more than Rs.29 lakhs and rather, they filed a suit for declaration to the effect that the agreements to sell dated 09.12.2015 and 10.06.2016 as executed by respondent No.2 in favour of petitioner (complainant) stand cancelled and the earnest money paid by the petitioner-complainant stand forfeited.

I have heard learned counsel for the petitioner.

While granting anticipatory bail to the respondent No.2, learned Additional Sessions Judge, Hoshiarpur vide order dated 06.07.2018 has observed as under:-

“4. Heard. Police file is called and same is perused. Allegedly, agreement to sell was executed for sale of land by accused-petitioner No.1 Saroop Kaur in favour of complainant. Besides earnest money more money was received at different times. Applicant No.1-accused has already filed civil suit for treating agreement to sell as cancelled and forfeiting earnest money. Counter claim has been filed by complainant in this case for specific performance of agreement to sell. It is a pure civil dispute which has been converted in criminal case just on the apprehension that applicant Saroop Kaur may not leave India. So, it is a fit case where applicants shall be allowed to join investigation. Hence, interim anticipatory bail is granted to applicants. Accordingly, applicants are directed to join the investigation of this case within a period of seven days from today and in the event of their arrest by Investigating Officer/Arresting Officer, they shall be released on interim anticipatory subject to the satisfaction of Investigating Officer/Arresting Officer and subject to the following conditions:-

- a) They shall join the investigation, as and when called by the I.O.
- b) They will not tamper with the prosecution evidence
- c) They will not leave the country without the prior permission of the trial Court.”

The parties are already in civil litigation. This Court finds that it

that the dispute is more or less civil in nature, but it has been given a criminal colour.

Thus, no ground for cancellation of anticipatory bail granted to respondents No.2 and 3, is made out.

Dismissed.

(HARI PAL VERMA)
JUDGE

05.10.2018
sanjeev

Whether speaking/reasoned	Yes/No.
Whether Reportable:	Yes/No.