

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

CRM-M-15202-2019
Date of decision:3.5.2019

Harish Kumar and another

....Petitioners

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL

Present: Mr. Varinder Kumar, Advocate
 for the petitioner.

 Ms. Aditi Girdhar, AAG, Haryana.

 Mr. Keshav Partap Singh, Advocate
 for the complainant.

GURVINDER SINGH GILL, J.

1. The petitioners seek grant of anticipatory bail in respect of FIR No.1086 dated 2.9.2018 under Sections 406, 420, 120-B of the Indian Penal Code, Police Station City Karnal, Haryana.

2. The FIR was registered at the instance of Rishab Gupta wherein it has been alleged that on 20.07.2017 both the petitioners namely Harish Kumar and Surender Mehla along with one more unknown person approached the complainant and represented that they are

into business of real estate and that they know about a good piece of land on Hansi Road and can get its sale effected in favour of the complainant for a reasonable price from its owners settled in Delhi. It is alleged that on 30.07.2017 the accused got an amount of ₹11 lacs paid from the complainant to one Ganesh Dass resident of Delhi as token money and thereafter an agreement dated 25.10.2017 for sale of land in question was executed by Ganesh Dass in favour of the complainant and his other two partners namely Parveen & Mukesh Singla, and two cheques for an amount of ₹18 lacs and ₹30 lacs were given by the complainant and thus a total amount of ₹59 lacs (including token amount of ₹11 lacs paid earlier) was paid by the complainant as earnest money. It is further alleged that immediately thereafter the petitioner and his companions took an amount of ₹16.82 lacs as commission. However, subsequently when the complainant went to the land in question and to check the 'Khasra' number mentioned in the agreement, it was found that houses were already constructed on the land in question whereas when the deal was struck, some vacant land had been shown to the complainant. When the accused were confronted, they admitted their mistake and assured to return the amount within 3-4 months after selling the land and further requested the complainant not to contact the vendors in Delhi. However the partner of the complainant approached the vendors in Delhi, who informed that the land in question was not available and

that the documents shown to the complainants by the accused were not correct. Subsequently on 12.03.2018, the vendors came to the house of the complainant and disclosed that the accused are partners with them in respect of the land in question and that the accused Harish and Surender Mehla had in fact taken an amount of ₹14 lacs from the vendors as commission out of the earnest money of ₹59 lacs paid by the complainant. The accused were called at the spot and were confronted who became annoyed and left the meeting while saying that they will return the amount of ₹30.82 lacs and that for rest of the amount the complainants may seek amounts from the vendors. It is further alleged that thereafter the vendors from Delhi returned an amount of ₹45 lacs and the agreement in question was cancelled. However, the petitioners did not return any amount which they had taken from the complainant.

3. Learned counsel for the petitioners has submitted that present case is a simple case where the transaction on the basis of agreement to sell fell through and did not materialize and that in fact subsequently the agreement in question was also cancelled and the vendors admittedly had returned an amount of ₹45 lacs to the complainant. It has further been submitted that even if the allegations levelled in the FIR are taken to be correct, the remaining amount of ₹30.82 lacs was in the nature of the commission which the petitioners had allegedly received from the vendors and vendees i.e. an amount of ₹16.82 lacs from the

vendees/complainants and an amount of ₹14 lacs from the vendors of Delhi and that at best the present case can be said to be case of settlement of accounts only.

4. Opposing the petition, the learned State counsel assisted by learned counsel for the complainant has submitted that the present case is a case where the vendors had returned a substantial amount of ₹45 lacs out of the received earnest money of ₹59 lacs and that in fact out of the said ₹59 lacs an amount of ₹14 lacs had been pocketed by the property dealers i.e. by the petitioners as commission and which till date has not been returned despite the fact that deal fell through and the petitioner could not lay any claim on the commission under the said circumstances.
5. Learned counsel for the complainant has further submitted that in fact there is an audio conversation between Shishpal Rana who is friend of complainant's father and Arvind Mann wherein there is categorical admission as regards the receipt of an amount of ₹16.82 lacs by the accused from the complainant.
6. I have considered rival submissions addressed before this Court. Having regard to facts and circumstances of the case and while bearing in mind that till date the accused have not returned the amount of ₹16.82 lacs and ₹14 lacs taken as commission which in fact had been received by deceit by showing a vacant land whereas in fact the land mentioned in the agreement was constructed piece of land, no special case for grant of anticipatory bail is made out.

The petition, is sans merit and is hereby dismissed.

6. It is, however, clarified that none of the observations made above shall be construed to be an expression on merits of the main case.

(GURVINDER SINGH GILL)
JUDGE

3.5.2019
Gaurav Sorot

Whether reasoned / speaking? **Yes / No**

Whether reportable? **Yes / No**