

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

**CRM-M-19669-2019
Date of decision: 10.05.2019**

Rajinder Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Ashok Kumar Khubbar, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. R. S. Mamli, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 81 dated 19.07.2018, registered under Sections 420, 406, 506 and 120-B of the IPC at Police Station Sadar Jagadhri, Yamuna Nagar.

As the FIR is giving minute details, the same is reproduced below for a ready reference:

“I and my brother have sold about 6 acres of land situated in village Mahmudpur about 1 ½ years back on quite good rates. Our deal was got done by aforesaid Subhash r/o Butheri. Subhash knew that after selling my land I have lot of money. I have also purchased land in Leda Khas. I had purchased this land @ Rs.20 Lacs per acres in June 2017. I received a call from Vikram @ Vicky Mob no.9991616935 on my Mob. no.8708890152. He told me that we have convinced one party from Punjab to purchase about 4 ½ acres land of Rajinder s/o Hardeep Singh r/o village Leda Khas. He is ready to purchase the land of Rajinder Singh @ Rs.90 lacs per acres. Before the deal is finalized with the party of Punjab you can get the agreement to sell executed

regarding the land of Rajinder Singh and he will sell his land @ Rs.65-70 lacs per acres. After selling the land @ Rs.90 lacs to the party of Punjab whatever profit we earn, we shall divide it amongst us. I told Vikram @ Vicky that the land of Rajinder is not more than of Rs.20 lacs per acre. I do not want to purchase the land of Rajinder Singh at a high price. Even after this Vikram @ Vicky continued calling me on phone and kept on saying that execute the agreement to sell of land of Rajinder Singh and we have a party from Punjab who is ready to purchase the land at higher price. We shall sell this property to the party of Punjab after a few days when the agreement to sell is executed in your name. I still did not agree with Vikram @ Vicky. I talk regarding this with my friend Sanjeev r/o Rampur Khaddar and Satbir r/o Salimpur Bangar who advised me to meet Vikram @ Vicky and talk to him. I called Vikram @ Vicky on phone and asked him to meet me. He told me that he is out of station for some days for some work and that he cannot meet him now. But he shall send his friend Raghbir Tohana to meet me and he knows the entire things which is in the knowledge of Rajinder r/o Village Leda Khas and the party of Punjab. 5-10 days prior to 1.11.2017 Raghbir Tohana met me at Sanja Chulha Dhaba in Chacharauli. He told me that our party is ready to purchase land of Rajinder Singh r/o Leda Khas @ Rs.90 lacs per acres. In case our party meets Rajinder Singh directly then the deal of the party with Rajinder Singh shall be done @ Rs.65-70 lacs and we shall not get benefit at all. You have the money to enter into an agreement with Rajinder Singh regarding his land. You execute the agreement to sell with Rajinder singh. It shall be our responsibility to get the land sold @ Rs.90 lacs per acre. We shall divide the profit amongst ourselves. Even after hearing this I did not believe Raghbir Tohana. I did not say yes to him. After this Subhash Butheri met me who told me that he has come to know that you are negotiating along with Vikram @ Vicky and Raghbir Tohana to purchase the land of Rajinder Singh r/o village Leda Khas. I told Subhash r/o Butheri that I do not know much about Vikram @ Vicky and Raghbir Tohana, I have only talked with them on phone. I have met Raghbir Tohana only once and do not want to get involved in this. Subhash Batheri informed me that there is no need to worry, I know Vikram @ Vicky and Raghbir Tohana who has a party to purchase land of Rajinder Singh r/o Village Leda Khas. In case you do not have faith, then I am ready to invest Rs.5 lacs in your name in this agreement to sell. On hearing this from Subhash r/o Butheri I believed him and agreed to purchase 4 ½ acre land of Rajinder Singh r/o Village

Leda Khas. After this Raghbir Tohana, Vikram @ Vicky and Subhash got my deal finalised with Rajinder Singh and his son Kamal @ Rs.68 lacs per acres and fixed 1.11.2017 the date for execution the agreement to sell. These all persons told me that at the time of agreement to sell Rs.25 lacs have to be given and thereafter Rs.50 lacs shall be given as part payment, Subhash r/o village Butheri that at the time of agreement to sell told me that he himself shall arrange out of Rs.25 lacs. On 1.11.2017 Raghbir Tohana, Rajinder Singh and his son Kamal in the evening came to Bilaspur for execution to agreement to sell. Before the execution to agreement to sell Subhash came to my house in village Slemipur Bangar and gave me Rs.5 lacs and told me not to tell Rajinder Singh, his son Kamal and Raghbir Tohana that I have given Rs.5 lacs to you. Subhash Batheri told me that it shall be his responsibility after the agreement to sell. I was convinced by Subhash Batheri and I and Subhash Batheri reached Bilaspur with money. As it was agreed earlier I gave Rs.25 lacs to Rajinder Singh and his son Kamal. After giving Rs.25 lacs to Rajinder Singh and his son Kamal, Rajinder Singh on the asking of Raghbir Tohana executed an agreement to sell of 4 ½ acres of land @ Rs.68 lacs per acres. The date of execution of sale deed was fixed for 29.1.2018. To make the part payment of Rs.50 lacs on 10.11.2017 was also incorporated in the agreement to sell. Raghbir Tohana, Subhash r/o Butheri, Rajinder Singh and his son Kamal at the time of agreement to sell did not give any suspicion to me and my friend who were present along with me at the time of agreement to sell that they are committing a conspiracy with the intention to commit fraud with me. After the agreement to sell I had talks with Vikram @ Vicky on his Mob no.996166935 and Raghbir Tohana on his Mob. No.9991706274 on my Mob. no.8708890152. They kept on saying that we shall this land further to the party of Punjab @ Rs.90 lacs per acres once you to make the part of payment of Rajinder Singh. On 22.11.2017 on the asking of Subhash r/o Butheri, Raghbir Tohana and Vikram @ Vicky I gave Rs.25 lacs cash to Rajinder Singh and Rs.25 lacs by cheque no.020558 Dt.26.11.2017 as part payment. The aforesaid cheque of Rs.25 lacs was also encash in the account Rajinder Singh. After giving the part payment I kept on continuously saying to Raghbir Tohana, Vikram @ Vicky and Subhash r/o Butheri that as now I have also made the part payment now get the land sold further. On my pressurizing, Raghbir Tohana introduce me two person whose name I do not know who said to me that he is to receive his payment, you don't worry I shall soon make the entire payment to you and get the sale deed

executed. I have also talked to that person on his Mob. No. 9988649777 and he kept on giving false promises. The date of registration of sale deed of fixed for 29.01.2018 till then also Raghbir Tohana, Subhash and Vikram @ Vicky kept on saying you did not worry and part will not run away and that there is some delay in receiving the money. When I told them after the date of expiry of date of sale deed how will I tell Rajinder Singh to get the executed sale deed. On this, Raghbir Tohana, Vikram @ Vicky and Subhash r/o Butheri told me that you need no worry we shall talk to Rajinder Singh and his son Kamal and get the time of sale deed extended. I had not talks with Rajinder Singh and his son Kamal for extension of date of sale deed. He on his own decided to extend the date of the sale deed from 29.01.2018 to 30.04.2018. Rajinder Singh and his son Kamal was were already hand in glove with Raghbir Tohana, Vikram @ Vicky and Subhash r/o Butheri and the Farji customer thereafter Raghbir Tohana, Vikram @ Vicky and Suhash r/o Butheri kept on saying till 30.04.2018 that a party is going to receive the mpayment and as soon he receies thte money we shall get the sale deed executed in his name. On 30.04.2018 also Rajinder Singh and his son Kamal without my asking and on the asking of Raghbir Tohana, Vikram @ Vicky and Subhas r/o Butheri got the date of sale deed extended Raghbir Tohana, Vikram @ Vicky and Subhash r/o Butheri kept on saying that after taking money @ Rs. 90 Lacs from the party of Punjab we shall get the sale deed executed. Then I came to know that Raghbir Tohana, Vikram @ Vicky and Subhash r/o Butheri and other persons have formed a gang and in connivance of the land owner allures innocent persons and deceive them in their net. They enter into agreement to sell of cheap land in the name of rich people at very high price by say that we have a party who is ready to purchase the land at a very high price. This gang with the intention to grab the money and to win confidence also pays some money from their side at the time of agreement to sell, so that the purchasers has no suspicion on them. I have come to know that several cases have been registered against this gang for embezzling lacs and crores of rupees of other persons. This gang during this period have also cheated Niranjn Singh r/o Butheri Subhash r/o Bilaspur and Annu Kamboj r/o Bhattauli in connivance with the land owners and cases have been registered against them. In case Subhash r/o Butheri did not give me confidence that he knows Raghbir Tohana and Vikram @ Vicky very well and he has a customer of Rs.90 lacs per acre of the land of Rajinder Singh and if Subhash r/o Butheri did not invest his Rs. 5 lacs then I would never had agreed to purchase the land which is

Rs. 20 lacs per acre @ Rs. 68 lacs per acre. When this fraud came to my knowledge I talked to Raghbir Tohana, Vikram @ Vicky and Subhash r/o Buteri, then they told me that they had committed fraud of Rs.70 lacs in connivance with Rajinder Singh who is the owner of land and his son. We all have divided Rs. 70 lacs amongst ourselves. You cannot do anything now. Raghbir Tohana, Vikram @ Vicky and Subhash r/o Buteri stated that you as you had not agreed to invest the money on our asking in that eventuality we had sent Subhash Batheri to you. So that he may talk to you and by saying that he is ready to invest Rs. 5 lacs and connived you to purchase the land of Rajinder Singh @ Rs.68 lacs per acre. That the aforesaid accused also threatened that in case you file any complaint against us and if you ask for money and we shall get you killed. The gang of the accused is very active in area and has cheated many people. Thus it is prayed that the case be registered against aforesaid accused and strict action be taken to that they may not cheat any other person. My Rs. 70 Lacs may be got recovered from the accused persons.”

Learned counsel for the petitioner has argued that a perusal of the FIR shows that the petitioner, who is the owner of the land, never enticed the complainant to purchase his land at higher rate as the entire thrust of the complainant is on co-accused Vikram @ Vicky and Raghbir Tohana who allured him to purchase the land at higher rate as they assured him to arrange a buyer from Punjab who will purchase the land subsequently at a higher rate and, therefore, the complainant has entered into an agreement to sell to purchase the land with the petitioner on 01.11.2017 @ ₹68 Lakh per acre.

Learned counsel for the petitioner further submits that it is the case of the complainant himself that Vikram Singh @ Vicky and Raghbir Tohana along with Subhash kept on alluring him that they have a buyer from Punjab who purchase the land from him @ ₹90 Lakh per acre.

Learned counsel for the petitioner further submits that as per

the agreement, the complainant has paid ₹75 Lakh as earnest money and the date for execution of the sale deed was fixed as 29.01.2018, however, the date was extended as the complainant could not arrange the balance amount and stipulated date was fixed as 30.04.2018.

Learned counsel for the petitioner further submits that again, there was another extension of stipulated date as the complainant could not arrange the balance amount and the next date was fixed as 25.07.2018.

Learned counsel for the petitioner has placed reliance on the document dated 30.11.2018 (Annexure P-4) wherein, the parties have stated that on an earlier occasion, the date for execution of the sale deed was fixed as 29.01.2018, which was extended to 30.04.2018 as the complainant was unable to get the sale deed registered and in this regard, a Panchayat was convened and the date was then extended upto 25.07.2018.

Learned counsel for the petitioner has further argued that in fact the complainant himself was not ready with the money to make the payment of balance amount, therefore, despite the written agreement for extension of time in which the date for execution of sale deed was fixed upto 25.07.2018, the present FIR was registered on 19.07.2018, so as to escape the liability of the agreement to sell.

Learned counsel for the petitioner further submitted that there is no dispute about the identity of the petitioner or about the ownership of the land which is proposed to be sold and there is no allegation against the petitioner that he has allured the complainant to purchase the land at higher rate and it will be a debatable issue as to what was the market value of the land at the time of the execution of agreement to sell as the complainant has sought two subsequent extensions which were made with the mutual

consent of the petitioner and complainant.

Learned counsel for the petitioner further submitted that in fact the allegation of criminal conspiracy are against co-accused Vikram @ Vicky, Raghbir Tohana and Subhash and against them, some other cases of similar nature are also pending and the petitioner is not involved in any other case.

Learned counsel for the petitioner has further argued that the petitioner is still ready to execute the sale deed in terms of the agreement dated 01.11.2017 at the rate fixed in the agreement and even otherwise, it is a civil dispute as the complainant has a remedy to file a suit for specific performance of agreement to sell.

Learned counsel for the petitioner has further argued that the complainant himself owns some agricultural land in the same village and, therefore, he was aware of the market value of the property for which he entered into agreement to sell with the petitioner.

In reply, learned State counsel submits that investigation is complete; challan stands presented and the case is now fixed for framing of charge.

Learned counsel for the complainant has argued that the complainant was in fact trapped to purchase the land at higher rate by co-accused Vikram @ Vicky, Raghbir Tohana and Subhash and they are the main accused who have allured the complainant to enter into agreement to sell with the petitioner @ ₹68 Lakh per acre with the assurance that Vikram @ Vicky will get his land further sold @ ₹90 Lakh per acre.

Learned counsel for the complainant has also relied upon the order dated 07.09.2018 passed in CRM-M-35056-2018, vide which, the

anticipatory bail of the petitioner was dismissed by this Court.

After hearing learned counsel for the parties and going through the order dated 07.09.2018, I find that the dismissal of the anticipatory bail of the petitioner will not bar him to seek concession of regular bail after his arrest and on completion of investigation.

A perusal of the FIR though shows that the allegations are that Subhash, Ragbir and Vikram have approached complainant and allured him to purchase the land of the petitioner, which was agreed to be sold @ ₹68 Lakh per acre and an amount of ₹75 Lakh as earnest money was paid in pursuance to the agreement to sell dated 01.11.2017, which was twice extended as it is mentioned in the extension agreement that the complainant is not ready with the balance money.

The complainant has also raised some allegations against the petitioner that he was also hand in gloves with the three co-accused, however, a perusal of the FIR shows that the complainant has alleged three co-accused were having pre-negotiation with the complainant for the purchase of the land of the petitioner and the complainant has even stated that he has verified that the market value of the land was not more than ₹20 Lakh per acre as he himself owns some land in the same village i.e. village Leda Khas and thereafter, he again negotiated with the aforesaid three co-accused and on their allurement and assurance, he entered into agreement to sell with the petitioner.

Therefore, finding that the petitioner is the owner of the property who has agreed to sell his land by way of agreement to sell, the grievance of the complainant qua the petitioner is primarily of civil nature.

In view of the above, without commenting anything on the merits of the case, considering the fact that as per custody certificate, filed today in Court, the petitioner is in judicial custody since 18.02.2019; the investigation is complete and also in view of the fact that the offences are triable by the Court of a Magistrate, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

10.05.2019
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No