IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.20040 of 2019
Decided on: 16.05.2019

Bhinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. H.P.S. Ghuman, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this 2nd petition is for grant of anticipatory bail to the petitioner under Section 438 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.0099 dated 22.10.2018, for offence punishable under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860 (in short 'IPC'), registered at Police Station Bhadson, Tehsil Nabha, District Patiala.

The 1st petition seeking anticipatory bail to the petitioner was dismissed as withdrawn on 04.02.2019.

Notice of motion.

Mr. S.S. Sandhu, AAG, Punjab who is present in the Court accepts notice on behalf of the respondent while Mr. R.K. Jaswal, Advocate has appeared on behalf of the complainant.

It is relevant to mention here that vide order dated 18.01.2019 passed in CRM-M No.2154 of 2019, the anticipatory bail application of the co-accused namely Gurpreet Kaur was dismissed by this Court, by passing the following order:-

> *Counsel for the petitioner has submitted that as per the allegations in the FIR, which was got registered by one Kuldeep Singh Cheema, an enquiry was conducted against the petitioner and other co-accused. The operative part of the FIR is reproduced as under:-*
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> > ***"....**To, The Senior Superintendent of Police, Patiala,*
> >
> > *Subject: Application for taking action and for registering a case against 1) Jang Singh S/o Harbans Singh 2) Gurpreet Kaur W/o Late Gurmukh Singh R/o Village Biradwal, Tehsil Nabha, District Patiala 3) Bhinder Singh S/o Labh Singh R/o Jindalpur, Tehsil Nabha, District Patiala, for doing a land agreement with me and for getting done registry in the name of other party and for defrauding me of Rs. 34,00,000/ -, 78890-73615, Gurpreet Kaur, 73070-06700 (Gianjit Kaur). Sir, it is submitted that I, Kuldeep Singh Cheema S/o Prakash Singh Cheema is resident of Ram Singh Nau (Badson). Tehsil Nabha. District Patiala. That I had done an agreement in respect of land with Jang Singh s/o Harbans Singh s/o S. Bathu Singh R/o Village Biradwal, Tehsil Nabha, District Patiala in respect of 01 acre land situated in Biradwal, Tehsil Nabha, District Patiala. This land deal was done by me with Jang Singh @ Rs.15,60,000 per acre and a biana of Rs. 3,00,000/ was given and the date of registry was fixed for 15.10.2018 and along with it Bhinder Singh, dealer had taken Rs.1,00,000/- cash on loan from me. The copy of the agreement is enclosed. That I have come to know that aforesaid Jang Singh in connivance with dealer Bhinder Singh S/o Labh Singh, by doing cheating, had sold*

the aforesaid land to Bhupinder Singh S/o Jarnail Singh R/o H.No. 110-C, Gali No. 1, Bhadson Road, Ranjit Nagar, Tehsil and District Patiala. The copy of the registry is enclosed. That similarly an agreement was done to buy total land measuring 35 bighe 07 biswe 17 biswasiyan of Gurpreet Kaur W/o Late Gurmukh Singh R/o Village Biradwai, Tehsil Nabha, District Patiala's land in the name of myself and my wife Smt. Jagtar Kaur W/o Kuldeep Singh for Rs. 21,50,000/- per acre (@ 96 biswe) and an amount of Rs.30,00,000/- was given as biana and the date of registry was fixed for 20.12.2018. The copy of the agreement is enclosed. But, we came to know in July, 2018 that aforesaid Bhinder Singh, dealer s/o Labh Singh R/o Jindalpur in connivance with Jang Singh s/o Harbans Singh s/o Babu Singh had already got done the registry of the land and despite being said by us repeatedly neither the registry was got done nor the biana was returned. Similarly, Gurpreet Kaur W/o Late Gurmukh Singh R/o Bihadwal presently residing at Lakhmeerwal, Near Sunam, despite doing biana with us, had got done registry to someone else. In this deal also Bhinder Singh dealer was involved. When I came to know in this regard then I had shouted on which dealer Bhinder Singh had given me 02 cheques of Rs. 22/22 lakhs and one cheque of Rs.1,00,000/- of HDFC Bank and had said that I had promised to give the profit to you, therefore, I am giving you Rs.45 lakhs instead of Rs. 34 lakhs. I had got deposited the cheques given by Bhinder Singh, dealer in my account which got bounced and the bank receipt is enclosed. When we had asked Gurpreet Kaur W/o Late Gurmukh Singh and her

> *mother Gianjit Kaur presently resident of Lakhmiwala to return the money then she had got written an agreement on 17.09.2018 for returning our money that she will give Rs.30 lakhs upto 27.09.2018 (copy enclosed). The above mentioned Jang Singh, Gurpreet Kaur and dealer Bhinder Singh had defrauded me in connivance with each other. Now the aforesaid persons are neither returning my money and nor they are getting done registry in my name. That it is requested by presenting this application that appropriate legal proceedings may be undertaken against above mentioned accused and a case may be got registered with regard to this cheating and my money may be got returned to me by canceling the registry....”*

Counsel for the petitioner has argued that, in fact, the alleged agreement to sell with the complainant is a forged document and the petitioner never entered into an agreement to sell with the complainant. It is further submitted that from the bare comparison of the signatures of the complainant, on the agreement dated 21.02.2018 and the sale deed dated 14.06.2018, it can be made out that the same do not tally with each other. Counsel for the petitioner has further argued that in the agreement to sell, it is mentioned that 02 cheques bearing No.5376 and No.5377 were issued by the complainant, however, the same were never presented in the account of the petitioner and later on, as against the settled earnest money of Rs.30 lacs, the complainant transferred an amount of Rs.20 lacs by way of RTGS and paid another amount of Rs.10 lacs in cash. It is further submitted that out of the said amount received by way of RTGS, an amount of Rs.15 lacs was transferred in favour of co-accused Dalbir Kaur by way of issuance of 02 cheques of Rs.9 lacs and Rs.6 lacs, *respectively. It is further stated that the co-accused Dalbir Kaur is wife of one Bhinder Singh through whom the petitioner has entered into a deal to sell the land and it is Bhinder Singh, who has manipulated the 02 agreements i.e. one with Jang Singh and second with the complainant and in fact, the petitioner as against the sale deed executed by her in favour of a third person has received only Rs.78 lacs, details of which has been given in the petition.*

Counsel for the petitioner has further argued that the petitioner has not committed any offence and everything has been manipulated by the co-accused Bhinder Singh, who was dealing with the complainant as well as Jang Singh and the purchaser to whom the petitioner has sold the land and the petitioner being a lady was not aware of the conduct of Bhinder Singh. It is also submitted that anticipatory bail of co-accused Dalbir Kaur has been allowed by this Court vide order dated 11.01.2019 passed in CRM-M No.64715 of 2018.

In reply, counsel for the State, on instructions from the Investigating Officer, assisted by counsel for the complainant has, however, opposed the prayer for bail on the ground that after receiving an amount of Rs.30 lacs as earnest money, out of which Rs.20 lacs was paid by way of RTGS in the account of the petitioner and the remaining amount was paid in cash, the petitioner has not only backed out from the agreement but, has knowingly and intentionally in order to cheat the complainant sold the said property in favour of third person and has obtained an amount of Rs.78 lacs. It is further submitted by counsel for the State that the case of Dalbir Kaur is on a different footing as she was neither signatory nor an attesting witness in the agreement to sell and the payment of Rs.15 lacs by the petitioner to the said Dalbir Kaur, is not *proved to be outcome of the disputed agreement to sell or the sale deed executed by the petitioner in favour of a third person.*

Counsel for the State has further submitted that despite receiving the earnest money from the complainant, the petitioner has sold the land in favour of a third person knowingly and with clear intention to cheat the complainant and has backed out from the agreement to sell by alleging that she is not the signatory of the same.

Counsel for the complainant has additionally argued that after registration of the sale deed by the petitioner in favour of a third person, the mother of the petitioner namely Gianjit Kaur had further made an agreement with the complainant that she will refused the payment of Rs.30 lacs to the complainant on or before 27.09.2018, which show that the complainant has received the aforesaid amount of Rs.30 lacs as earnest money from the complainant but both the petitioner or her mother Gianjit Kaur have failed to return the aforesaid amount and thus, the intention to cheat the complainant, right from the day when the agreement to sell was executed and an amount of Rs.30 lacs was taken from the complainant by inducing him that the petitioner intend to sell her property in his name, is apparent, which was later on she sold land to a third person without returning the aforesaid amount of Rs.30 lacs to the complainant.

After hearing the counsel for the parties, I find no ground to grant anticipatory bail to the petitioner. The co-accused of the petitioner Dalbir Kaur was granted anticipatory bail, by this Court noticing the fact that there was no privity of contract between the complainant and the said Dalbir Kaur and as per the FIR, he has no dealing with her. However, considering the fact that there are serious allegations against the petitioner that she has *received an amount of Rs.30 lacs, out of which Rs.20 lacs was received in her account by way of RTGS from the complainant, as she induced the complainant to part away his money to sell her land which, in fact, she has sold to a third person and never returned the amount back to the complainant. Moreover, despite assurance given by her mother to return Rs.30 lacs to the complainant, by 27.09.2018, both have further backed out.*

For the foregoing reasons, the petition fails and is accordingly dismissed.”

Counsel for the petitioner could not make out any new ground, however, has argued that there are no direct allegations against the petitioner except that he was the property dealer, who has introduced the parties and later on, the agreement to sell was entered into between them. It is further submitted that the dispute is between Kuldeep Singh Cheema, Jagtar Kaur, Jang Singh and Gurpreet Kaur regarding the agreement to sell and the matter is of civil nature and the petitioner is a marginal witness on the said agreement to sell and therefore, he is not the direct beneficiary.

Counsel for the petitioner has further argued that one of the co-accused of the petitioner namely Gianjit Kaur, has been granted the concession of anticipatory bail vide order dated 15.03.2019 passed in CRM-M No.10003 of 2019 as she is mother of the accused – Dalbir Kaur, whose anticipatory bail application was dismissed and she has paid an amount of Rs.4.50 lacs in favour of the complainant – Kuldeep Singh Cheema. The said anticipatory bail application was confirmed today itself by passing a separate order. It is further argued that another co-accused namely Darshan Singh has also been granted the concession of anticipatory bail vide order dated 11.01.2019 passed in CRM-M No.381 of 2019, considering the fact that he is also one of the attesting witness and the said order was also confirmed on 11.04.2019.

Counsel for the State, on instructions from the Investigating Officer, assisted by counsel for the complainant has, however, opposed the prayer for bail on the ground that there are direct allegations against the petitioner that he being the property dealer allured the complainant to struck a deal with other co-accused in which he has parted away Rs.30 lacs as earnest money. As per the agreement, the sale deed was to be executed on 20.12.2018 but the petitioner, in connivance with the co-accused Jang Singh, got the sale deed executed in his favour and therefore, all the accused persons in conspiracy with each other has cheated the complainant. It is also stated in the FIR that when the complainant demanded the amount back, the petitioner – Bhinder Singh gave 02 cheques of Rs.22 lacs each and one cheque of Rs.1 lac, which were dishonoured by the bank, which further show that the intention of the petitioner and other accused persons was to cheat the complainant sine beginning.

After hearing the counsel for the parties, I find that no new ground is made out in this petition to entertain the second anticipatory bail application as noticed above, the first application was withdrawn by the petitioner as this Court was not inclined to grant any such relief, therefore, considering the fact that there are direct allegations against the petitioner that he in conspiracy with co-accused Dalbir Kaur has allured the complainant to enter into an agreement and when she had received an amount of Rs.30 lacs, she on the asking of the petitioner sold it to third person and the accused persons never returned the amount back to the complainant, thus, again I find no ground to grant the relief of anticipatory bail to the petitioner.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

16.05.2019
yakub

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No