IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23067-2019
Date of decision: 23.05.2019

Gurinder Singh Dhaliwal

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Ravi Chadha, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Hemender Goswami, Advocate
for the complainants.

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ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of anticipatory bail in FIR No.0248 dated 14.11.2018 under Section 409 IPC, registered at Police Station Dehlon, District Ludhiana.

For reference, relevant extracts of the FIR, got registered on the statements of complainants against Gurinder Singh Dhaliwal, Simardeep Kaur, Balbir Singh, Shripal and Davinder Singh, are reproduced as under: -

> *".......the complainants are owner and in possession of the property measuring 2496 sq. yds comprised in khasra No.2092/2095, khata/khatuni No.1696/2256, 1686/2246, 1696/2256, Abadi Near Rind Road City & Gill Railway Station,*

Village Gill, Hadbast No.263, Tehsil and Disrict Ludhiana as per jamabandi for the year 2010-2011 and vide registered sale deeds bearing Wasika No.420 dated 12.04.2012, Wasika No.719 dated 19.04.2012 and Wasika No.6399 dated 22.08.2012 and the market value of the said property of complainants is now below Rs.10,000/- per sq. yds and in total it comes Rs.2,50,00,000/- (Rs. Two Crores Fifty Lacs) approximately for 2496 sq. yds. The complainants were in need of money, therefore, for the sale of their above said property they contacted the accused No.1 Gurinder Singh Dhaliwa, accused No.3 Balbir Singh and accused No.4 Shripal who are in business of property dealers. The said accused persons assured the complainants that they will sell the above said property of complainants at a minimum rate of Rs.10,000/- per sq. yard and will charge 1% commission for the same from the complainants. The said accused persons further said to the complainants that for the sale of the property of complainants, they need a power of attorney in favour of one of them and some blank signed documents/stamp papers and cheque(s) to make sure/being security for their 1% commission from the complainants after the sale of property. Under the abovesaid assurance of the accused No.1, 3 & 4 the complainants executed a General Power of Attorney bearing Wasika No.88 dated 10.05.2016 in favour of accused No.1 Gurinder Singh Dhaliwal and which even shows the govt. rate of above said property of complainants as Rs.60,65,500/- for 2496 sq. yards, *however, the market value of the property in question is not below then Rs.2,50,00,000/- (Rs. Two Crores Fifty Lacs) for 2496 sq. yds. All the accused persons dishonestly and fraudulently and in conspiracy with each other as well as in order to cause wrongful gain for themselves and wrongful loss to complainants, got executed the sale deed bearing Wasika No.9144 dated 18.01.2017 of the above said property of complainants in favour of accused No.2 Simardeep Kaur from his husband the accused No.1 Gurinder Singh Dhaliwal for just Rs.20,00,000/- even after knowing the fact that the govt. value of the said property has been shown as Rs.60,65,500/- on GPA and market value of this property is not below than Rs.2,50,00,000/-. The accused persons have not paid even a single penny to the complainants for their said property rather threatened the complainants that they will misuse the blank signed papers/stamp papers and cheque(s) of complainants lying with them being security against 1% commission. As such, it is clear that the accused persons with their common intention and conspiracy, dishonestly have cheated and defrauded with the complainants and caused the wrongful gain for themselves and wrongful loss to the complainants and grab the valuable property of complainants and therefore, an FIR/case may be registered against the accused persons at possible and the accused persons be also arrested in this case in the interest of justice, law and equity....."*

Learned senior counsel for the petitioner submits that it is own case of the complainant that he along with his wife Paramjit Kaur executed General Power of Attorney in favour of the petitioner and thereafter, he entered into an agreement to sell dated 07.05.2016 in favour of his wife Simardeep Kaur, after receiving the cash amount of Rs.50.00 lacs and thereafter, he executed the sale deed on 18.01.2017, in which sale consideration of Rs.20.00 lacs was shown to be paid by the petitioner. It is further argued that there is a gap of about 08 months from the date of agreement to sell and execution of the sale deed and even possession of the property was handed over to the petitioner. It is further submitted that civil litigation is also pending between the parties and the complainants have already filed a suit for declaration to the effect that sale deed dated 18.01.2017 is null and void, as no sale consideration had been paid to the complainants.

Learned senior counsel for the petitioner has further argued that in the written statement filed in the aforesaid civil suit, the petitioner has taken a specific stand that the entire payment of Rs.60,65,500/- was made in cash and therefore, no criminal offence is made out.

In reply, learned State counsel, on instructions from the Investigating Officer and assisted by learned counsel for the complainant, has opposed the prayer on the ground that prior to registration of the FIR, an inquiry was conducted, in which it was found that the complainant or his wife are not paid a single penny as sale consideration, in lieu of which the agreement to sell, GPA and the sale deed were executed and finding that a case of misappropriation and criminal conspiracy is made out against the petitioner, present FIR was registered and therefore, custodial interrogation of the petitioner is required to find out the cuttings made in the agreement to sell, description of which is typed, however, the date is mentioned by hand as 17.05.2016.

Learned counsel for the complainants has additionally referred to photocopy of the agreement to sell, wherein the date was initially mentioned as '07.05.2016' and later on, it was interpolated as '17.05.2016', as in this document, it is mentioned that the complainants have already executed GPA in favour of the petitioner vide deed No.88 dated 10.05.2016, whereas this document is dated 07.05.2016 and therefore, the petitioner, in order to remove this discrepancy, has made cuttings in the date from '07.05.2016' to '17.05.2016'. Learned counsel for the complainant has also placed on record photocopy of this document, in which date '07.05.2016' is written in the flow of handwriting, whereas in the same document, which is relied upon by the petitioner, in vernacular, interpolation as '17.05.2016' is visible. It is further submitted that no receipt was ever executed by the complainants in token of receiving any amount and the petitioner has in fact fabricated the document, to show that a huge payment of Rs.60,65,500/- was made in cash.

After hearing learned counsel for the parties, I find no ground to grant anticipatory bail to the petitioner, for the following reasons: -

(a) Admittedly, it is case of the petitioner that entire amount of Rs.60,65,500/- was made in cash, however, the complainant or his wife never executed any receipt in this regard and only the recital is made in the agreement to sell and the sale deed.

(b) A perusal of the sale deed also shows that there is no endorsement by the sub-Registar at the time of its execution that any amount was paid in his presence either in cash or by way of any bank transaction, therefore, passing of the sale consideration was not acknowledged by the sub-Registrar.

(c) The vernacular of two copies of agreement to sell; one relied upon by the complainants shows that in the agreement to sell, date is shown as '07.05.2016', whereas in the second copy relied upon by the petitioner, the figure is changed as '17.05.2016', which is visible that there is some interpolation and the same requires scientific examination.

(d) The petitioner could not dispute that he is property dealer, as stated in the FIR and there were some understanding between the parties to execute certain documents to enable the petitioner to execute the sale deed and pay the amount to the complainants, whereas he executed the sale deed in favour of his own wife without making any payment, therefore, prima facie, he has committed the offence of embezzlement, misappropriation and forgery.

(e) The police has conducted an inquiry before registration of the FIR, in which primarily it is found that signatures of the complainants were taken on blank stamp papers and a full and final payment agreement was prepared, against which no sale consideration was passed. Needless to say that from a bare reading of the sale deed, it is apparent that even no sale consideration was passed before the sub-Registrar at the time of its execution.

(f) Even otherwise, the observations made in the agreement to sell regarding transfer of possession without getting its registered, also makes it a suspicious document.

(g) There is nothing on record to show that the petitioner was having Rs.60,65,500/- in cash, as no bank statement is relied upon.

In view of the above, I find that custodial interrogation of the petitioner is required to recover the documents and conduct the proper investigation. Therefore, considering the serious allegations levelled in the FIR, I find no ground to grant anticipatory bail to the petitioner.

Dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

23.05.2019
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No