

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

206

CRM-M-46161-2019

Date of decision : 17.12.2019

Vikram Singh

... Petitioner

Versus

State of Punjab

.. Respondents

CORAM : HON'BLE MR.JUSTICE RAJBIR SEHRAWAT

Present : Mr.NP.S.Mann, Advocate
for the petitioner.
Mrs.Amarjit Kaur Khurana, DAG, Punjab.
Mr.B.S.Bhalla, Advocate for the complainant.

Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for issuance of directions to the Arresting Officer/Investigating Officer/Officer-In-Charge/SHO, Police Station NRI, District Amritsar, to release the petitioner on anticipatory bail in the event of arrest or surrender in case of FIR No.12 dated 11.09.2019, registered under Sections 406, 420, 120-B, IPC registered at Police Station NRI, District Amritsar.

The FIR in the case has come on the basis of e-mail sent by the complainant to the Additional Director General of Police, NRI Wing, Punjab, in which it was alleged that the complainant was permanent resident of Malaysia. However, he was having some ancestral property in India as well. His children were studying in India for their MBBS Degree

and at that point of time, the petitioner represented to the complainant that a company was intending to purchase the parcels of land which were owned by the mother and wife of the petitioner and the wife of the complainant. For that purposes, the complainant asked his wife to execute a Power of Attorney in favour of son of the complainant, so that the deal could be finalized, as was represented by the petitioner. Subsequently, although the land owned by wife of the complainant was sold out for a sum of Rs.2,63,52000/-. However, the complainant/his wife/ children were paid only an amount of Rs.1,40,00,000/- in total. The balance amount has been misappropriated by the petitioner and his family members. On the basis of these allegations, the FIR has been lodged.

Arguing the case for the petitioner, learned counsel for the petitioner has submitted that it is a civil dispute, which could have been raised before the civil Court, however, no civil suit has been filed by the complainant so far. There is delay of eight years in lodging the FIR, therefore, the present FIR has been lodged by way of misuse of the process of law. Still further, it is submitted that even if there is a dispute of payment between the parties, the police are not supposed to act as a recovery agent for the complainant. It is also submitted that the petitioner is neither a vendee nor the witness or signatory to any proceedings qua any sale of the property from the chunk of the complainant or his wife. Hence, the petitioner has no concern, whatsoever, with the payment of amount, as such.

On the other hand, counsel for the respondent-complainant has submitted that the police themselves had conducted a kind of inquiry into the incident. During the inquiry, it has come to fore that the entire land owned by the mother and wife of the petitioner, as well as owned by the wife of the complainant was sold through one Kirpal Singh. He has stated to the police that he had handed over an amount of Rs.1,37,07,000/- in cash to the petitioner himself and the remaining amount, Rs.1,69,10,000/- was given through cheques in the name of the wife and mother of the petitioner, therefore, the petitioner cannot be heard to say that he was not involved in the transaction of sale of the property of the complainant or his wife. It is further pointed out that the property owned by the mother and wife of the petitioner; as well as those owned by wife of the complainant; have been sold to same purchaser. The entire proceedings of agreement to sell qua the entire land, were being carried out by the petitioner, with the active involvement of the mother and wife of the petitioner. Still further, it is submitted that even the entire amount of sale consideration, including that for the land owned by the wife of the complainant, in the first instance; was received by the petitioner only. Some amount; which was received in cash; was even deposited in the account of the wife and children of the complainant by the petitioner himself.

It is further contended by learned counsel for the complainant that complainant and his children were not well versed with the Punjabi

language, being born in Malaysia only, therefore, they were made to sign on certain documents; which they did not even completely understand. Still further, it is submitted by the counsel for the complainant that although some amount have come out of the account of the children of the complainant; as well as; some amount in the account of the complainant himself, however, even if the entire amount deposited in those accounts at the relevant time, is taken into consideration that does not add upto the total sale consideration of more than Rs.2,60,00,000/- agreed & paid as per the agreement to sell.

It is further submitted that it has also come on record by way of statement of the aforesaid Kirpal Singh; that the petitioner himself had represented to him that the children of the complainant were not having bank accounts in India, therefore, the entire amount for sale consideration qua the land of the wife of the complainant also be handed over to him; and he would be making respective payment to them by getting the accounts opened and getting the amount deposited in the said bank accounts. However, despite best efforts by the complainant and his wife, the petitioner did not make the payment of the entire sale consideration. Even as of today, amount of Rs.1,68,00,000/- is yet to be paid by the petitioner. Adding up the interest thereupon, even at the bank rate, the amount goes much higher. In the end, it is submitted by learned counsel for the complainant that the dispute, by any means, cannot be said to be a civil dispute. Civil aspect of the matter was over with the sale of land.

Thereafter, it is only misappropriation of the amount received by the petitioner on behalf of the wife of the complainant; which has not been paid to her by the petitioner; so far.

Of course the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under CR.P.C.; is that the investigating officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the investigating agency, an extra ordinary power has been conferred upon the Courts under Section 438 cR.P.C. However, this power is so extraordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the fact of the present case, this Court finds that there are intricate details of the allegations against the petitioner. It is not

even disputed by the petitioner that the land belonging to the mother and wife of the petitioner; as well as the land owned by the wife of the complainant, both; were sold to the same buyer through Kirpal Singh. Even the details of the bank accounts, as placed on record or as produced before the Court during the arguments, did not show the amount of consideration coming into account of the complainant, his wife or his children.

During investigation, even the person through whom the land was sold, has categorically stated before the police that the entire amount of sale consideration, including amount of sale consideration for the land belonging to the wife of the complainant, was paid to the petitioner only.

Hence, at this stage, by any means, this Court does not find any mitigating circumstances in favour of the petitioner, showing his ex-facie innocence vis-a-vis the allegations levelled against him. Moreover, the assertion of the petitioner that he is not concerned with the sale of the land in question or with the receipt of the amount of consideration thereof, have also been falsified by the person through whom; admittedly; the land was sold. This Court also finds that it is a case of alleged embezzlement of money by creation of documents and by misrepresenting before the complainant and by resorting to cheating. Therefore, if the complaint filed by the complainant is to be properly investigated then even the trail of the money has to be traced by the police. In that situation, if the petitioner is granted protection against his

arrest, by granting him anticipatory bail, then free and fair investigation by the police would also be adversely affected. Hence, this Court does not find any ground to interfere and to exercise its extra ordinary jurisdiction under Section 438 Cr.P.C. so as to grant anticipatory bail to the petitioner.

In view of the above, finding no merit in the petition, the same is dismissed.

17.12.2019
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[RAJBIR SEHRAWAT]
JUDGE

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