

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

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**CRM-M No. 53046 of 2019
Date of decision : 12.12.2019**

Ravinder Kumar

.....Petitioner

Vs.

State of Haryana

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Manoj Kaushik, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.497 dated 14.11.2016, registered under Sections 420 and 406 IPC (Sections 467, 468 and 471 IPC added later on) at Police Station Kherki Daula, District Gurugram.

In brief, the facts of the present petition are that Vikram/co-accused of the petitioner had entered into an agreement to sell the property to the complainant. About Rs. 23 lakhs were paid to the said co-accused. However, later on the co-accused did not appear before the Sub Registrar for executing the sale deed in favour of the complainant. Still further, it came out that the said property was not even owned by the said co-accused on the date of agreement with the complainant. Hence, to create a story of returning the money to the complainant, an affidavit was prepared on behalf of the complainant, in which it was stated that Rs.11 lakhs have been received back by the complainant. However, the complainant asserted that she had never executed any such affidavit. The same was fabricated by the petitioner and his above said co-accused. The petitioner happens to be an attesting witness of the

said affidavit.

While arguing the case, learned counsel for the petitioner has submitted that the petitioner is not beneficiary, in any manner on account of the said affidavit. The main accused has already been granted regular bail by the Court below.

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 extra-ordinary that it is not even available in some 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 facts of the present case, it comes out that as per the allegations, the co-accused Vikram had entered into an agreement to sell with

the complainant, at a time when even his mother was not the owner of the said property. The money was also received by the co-accused. However, neither the money was returned to the complainant nor the sale deed was executed. As an attempt to embezzle the money paid by the complainant, the said affidavit was fabricated by the co-accused Vikram in collusion with the present petitioner. Although the affidavit of the complainant has been, allegedly, created on the stamp paper, however, the same was also purchased by the said co-accused Vikram in his own name. Still further, although no affidavit is required to be attested by any private person, however, still to lend extra credence to the said affidavit, the petitioner agreed to be the attesting witness of the affidavit as well. This shows the extra interest of the petitioner in the process of fabrication of the document by the co-accused. Although the petitioner had denied his signatures on the said affidavit, however, the FSL report has confirmed that it was the signature of the petitioner only. Hence, at this stage, 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. Hence, this Court does not find it a fit case to grant anticipatory bail to the petitioner.

Accordingly, finding no merit in the petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

12.12.2019

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No