IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206/2 **CRM-M-23583 of 2020**
Date of Decision: 27.10.2020

Kamaljit Kaur

...... Petitioner

Versus

State of Punjab

.... Respondent

2) **CRM-M-7229 of 2020**

Gurpal Singh

...... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. D.P. S. Mann, Advocate,
for the petitioner(s).

Mr. H. S. Multani, AAG, Punjab.

Mr. Amaninder Preet, Advocate,
for the complainant.

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AMOL RATTAN SINGH, J. (ORAL)

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

CRM-M-23583 of 2020

1. This is the second petition filed by the petitioner seeking the concession of 'pre-arrest bail' in terms of the provisions of Section 438 of the Cr.P.C., upon FIR no.2, dated 01.01.2020, having been registered at Police Station Baghapurana, District Moga, alleging therein the commission of offences punishable under Sections 420/406/120-B of the IPC.

The allegation is that the petitioner and her husband (petitioner in the accompanying petition), having entered into an agreement of sale and also having got executed a sale deed qua certain land measuring 4 marlas, did not actually pay the consideration amount of Rs.6,40,000/- (though it is not denied by learned counsel appearing for all parties that such payment having been made is actually stated in the sale deed itself).

However, the contention is that two cheques amounting to Rs.16,05,000/- were issued by way of security, despite which money was not paid.

2. She had earlier filed CRM-M-13077 of 2020, also seeking the same concession, which was dismissed by this court by passing the following order on 28.05.2020:-

> "*All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.*
>
> *After arguing at a great length of time, when counsel for the petitioner could not show any legal transaction of Rs. 6,40,000/- having been paid to the complainant on account of transfer of the land admittedly as per the registered sale deed (as admitted by counsel for the complainant and the petitioner that such sale deed was registered on 15.05.2019), learned counsel for the petitioner seeks to withdraw this petition.*
>
> *Dismissed as withdrawn.*"

3. Therefore, her co-accused (her husband), Gurpal Singh, filed CRM-M no.7229 of 2020 (also listed alongwith now), and was admitted to interim bail by this court (co-ordinate bench) on 03.03.2020, with the following order passed:-

> "*Mr. Amaninder Preet, Advocate has appeared on behalf of the complainant by filing vakalatnama, which be taken on record.*
>
> *It is contended on behalf of the petitioner that the dispute*

between the parties is basically of civil nature and it has been so presented so as to bring it within the definition of criminal offence and further the petitioner is ready and willing to join the investigation.

Learned State counsel, on instructions from ASI Balbir Singh, states that the petitioner be directed to do so.

Accordingly, the petitioner is directed to join the investigation by contacting the Investigating Officer within 5 days from today and render all sort of cooperation. The petitioner is also directed to surrender his passport, before the Investigating Officer, if he has got one, otherwise to furnish affidavit in that regard. If in the meanwhile, he is arrested, he be released on interim bail to the satisfaction of Investigating Officer/Arresting Officer.

Adjourned to 1.5.2020."

4. In the present petition, on 09.09.2020, it had been contended by learned counsel for the petitioners, before this court, that even the brother of the complainant in the FIR, i.e. Sikander Singh, had signed a statement before the police on 08.02.2020 that in fact it was the complainant, i.e. his brother Beant Singh, who had not returned the cheques given by the husband of the petitioner, i.e.Gurpal Singh (who has filed the connected petition), even though Gurpal Singh and Beant Singh are cousins and he (Sikander Singh) had reposed trust in him.

Learned counsel for the petitioner had further drawn attention of this court to the joint statement made by the complainant (Beant Singh) and his brother, Sikander Singh, (copy Annexure P-8), on 03.02.2020, stating therein that Rs.2,48,000/- had been paid in cash to Sikander Singh and Beant Singh.

Learned counsel had further submitted that in that statement itself the complainant and his brother had also stated that since it was a cumbersome process for the petitioner and her husband to open an account in India as they were Non-Resident Indians, the sale consideration for the transaction in question, was being paid in cash.

5. Upon those contentions having been raised on that date, this court, while reproducing Section 269ST of the Income Tax Act, 1961, had ordered the Commissioner of Income Tax-I, Ludhiana, to be impleaded as respondent no.2 in the present petition, with notice issued to the said authority.

Thereafter, upon a direction having been given to the said authority to file an affidavit with regard to the implications of Section 269ST, as regards any cash transaction for an amount above Rs.2,00,000/- being made, an affidavit dated 06.10.2020 had been filed by the Principal Commissioner of Income Tax-I, Ludhiana, stating therein that as per the said provision, if a cash transaction above Rs.2,00,000/- was found to be unexplained, an equal amount of penalty would be imposable on the recipient of the amount. (Sections 269SS and 271DA of the Act of 1961 had also been referred to in that affidavit).

Hence, no criminal liability was shown to be falling upon either the person making such payment or receiving such payment, with the only liability being a penalty equal to the cash transaction.

6. Consequently, on 09.10.2020 this court had observed in its order that the question therefore would be as to whether or not the petitioners in these two petitions (wife and husband) had actually paid money (by way of consideration) for the land purchased by them from the complainant and his brother, vide a sale deed dated 15.05.2019.

It had also been recorded in that order that counsel for the petitioners had submitted that even the brother of the complainant, i.e. 'co-seller' of the land in question, had stated before the police that the entire consideration of Rs.6,40,000/- had actually been received by the vendors (the complainant and his brother Sikander Singh), but that his brother was backing out from accepting that such payment had been made. However, the complainants' brother had also stated that the cheques initially given to the petitioners herein (prior to payment of consideration in cash), had not been returned to the vendors thereafter.

7. On that date (09.10.2020), counsel for the complainant had however submitted before this court that even in the enquiry conducted prior to the registration of the FIR, the enquiry officer had stated that the money had not actually been paid to the complainant.

Having considered those arguments, i.e. on the one hand, the enquiry officer stating that the money had not been paid, but the brother of the complainant stating that the entire money had been paid, the petitioners had been ordered to join investigation and if their arrest was sought, they were ordered to be admitted to bail to the satisfaction of the arresting officer/Duty Magistrate, subject to them further complying with the conditions stipulated in Section 438 (2) of the Cr.P.C.

Upon a contention raised by learned counsel for the Revenue on that date, as regards any enquiry to be conducted against the petitioners with respect to the cash transaction, this court had observed that any such enquiry would continue as per procedure laid down in the Income Tax Act, unhampered by any observation made by this court in any order passed in this petition, it only being one seeking anticipatory bail.

8. Today, learned State counsel, on instructions from ASI Gurbinderjit Singh, submits that both the petitioners have joined investigation and that presently their custodial interrogation is not required.

Learned counsel for the complainant however submits that, firstly, with a similar petition earlier filed by the petitioner (CRM-M-23583 of 2020) having been dismissed, a second petition on the same cause of action would not lie and consequently this petition must be dismissed.

He also relies upon a judgment of the Supreme Court in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav** 2005(1) RCR (Criminal) 703 and a judgment of a Full Bench of the Rajasthan High Court in **Ganesh Raj v. State of Rajasthan and others** 2005(3) RCR (Criminal) 30.

9. Having considered the matter, with the investigating agency itself not requiring the custodial interrogation of the petitioners, I would see no reason to not allow these petitions, though equally obviously, if the complainant is aggrieved of the investigation in any manner, he would naturally be at liberty to avail of his remedy in law, qua any such grievance.

10. Consequently, with this court already having made detailed observations in the previous order as regards the complainants' own brother (with him also being a co-vendor of the land), having admitted that the entire consideration had been received by them, and thereafter with the investigating agency itself not requiring the custodial interrogation of the petitioner, this court would not order, in these petitions, that the petitioners be arrested.

11. As regards the judgment of the Supreme Court cited by learned counsel for the petitioners in *Kalyan Chandra Sarkars'* case (supra), it has not been pointed out by learned counsel for the petitioners that anywhere in the said judgment, it is recorded that the investigating agency itself did not want custodial interrogation of the accused in that case.

Undoubtedly, the ratio of the judgment is to the effect that once bail has been refused to any accused after considering the matter, it should not be granted subsequently, unless there is a change in the circumstance.

In the present case, though otherwise there may have been no actual change of circumstance since the petition filed earlier by Kamaljit Kaur (one of the petitioners herein), i.e. CRM-M-13077 of 2020, was dismissed on 28.05.2020, however the detailed arguments made in the present petition as regards the stand of the complainants' own brother were not made before this court (or at least are not seen to be recorded in that order), and this court had in fact essentially dismissed that petition holding that counsel for the petitioner had not been able to show any legal bank transaction of Rs.6,40,000/- being paid to the complainant for purchase of the land, (though the amount was shown to have been paid even in the registered sale deed). Further, in that order (dated 28.05.2020), neither had the provisions of the Income Tax Act been gone into by this court (this very Bench) in detail, nor in fact, to repeat, had the statement of the brother of the complainant been noticed.

Hence, without making any comment on the actual merits of the case, this petition is allowed and the aforesaid order made absolute on the same terms and conditions.

CRM-M-7229 of 2020

12. The petitioner in this case is the husband of the petitioner in the connected petition (disposed of hereinabove) and consequently, the same reasoning would apply for allowing this petition too.

Hence, this petition is also allowed, with the order dated 03.03.2020 made absolute on the same terms and conditions.

A copy of this order be placed on the file of the other connected matter too.

October 27, 2020 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No