IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 17.07.2020

1. CRM-M-12998-2020 (O&M)

Kusum Lata

... Petitioner

Vs.

State of Haryana

... Respondent

2. CRM-M-14019-2020 (O&M)

Rajpal Singh Rana

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Manoj Pundir, Advocate
for the petitioners.

Mr. Anant Kataria, DAG, Haryana.

Mr. Vivek Goyal, Advocate
for the complainant.

****

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in these petitions is for grant of anticipatory bail to petitioners Kusum Lata and Rajpal Singh Rana, in FIR No.131 dated 18.04.2020 under Sections 406 & 420 IPC (Section 120-B IPC was added later on), registered at Police Station Chandimandir, District Panchkula.

Learned counsel for the petitioners submits that as per allegations in the FIR, petitioner Kusum Lata entered into an agreement to sell with the complainant for a sum of Rs.18.00 lacs and received an amount of Rs.5.00 lacs as earnest money. The agreement to sell was witnessed by her husband/co-accused Rajpal Singh Rana. It is further stated in the FIR that the agreement to sell was executed on 30.07.2019 and stipulated date for execution of the sale deed was fixed as 30.10.2019. It is also stated that while entering into the agreement to sell, petitioner Kusum Lata told the complainant that house is free from all encumbrances and there is no loan on the said house. Later on, the complainant came to know that petitioner Kusum Lata had raised a credit limit loan from State Bank of India (earlier State Bank of Patiala) and on verification, it was found that in the name of Jagdamba Paint House, the loan had been taken. Later on, petitioner Kusum Lata got the time extended upto 11.11.2019 with an undertaking that the loan will be cleared by that time, however, despite the fact that complainant remained present in the office of sub-Registrar on that day, the petitioners did not appear, as they, in a pre-planned manner, had cheated the complainant and allured her to part away Rs.5.00 lacs paid as earnest money for selling the mortgaged property.

Learned counsel for the petitioners further submits that the petitioners are still ready to execute the sale deed by getting the loan cleared from the bank. It is further submitted that while granting interim protection, it was noticed by this Court that it was in the knowledge of the complainant that the property is mortgaged with the bank and it was verified by her son. It is also submitted that petitioner Rajpal Singh Rana is not owner of the property and it is his wife/co-accused Kusum Lata, who is owner of the property and she is ready and willing to execute the sale deed.

Learned State counsel, assisted by learned counsel for the complainant, has, however, opposed the prayer for bail on the ground that in a pre-meditated mind, both the petitioners allured the complainant that they intend to sell the property, which is free from all encumbrances and therefore, there was no mention in the agreement to sell about any mortgage or charge over the property. It is further submitted that the complainant, who is an old lady aged about 70 years, from her hard-earned money, had paid earnest money of Rs.5.00 lacs, as she wanted to purchase the house and it came to her notice that in fact, the bank, by declaring the loan account as NPA, has already taken possession of the property and therefore, the petitioners were not in a position to execute the sale deed, even if they had made a statement at the time of issuance of notice of motion.

After hearing learned counsel for the parties, I find no ground to grant anticipatory bail to the petitioners.

It is admitted position that petitioner Kusum Lata was owner and her husband Rajpal Singh Rana was an attesting witness to the agreement to sell and was having all knowledge about the property, which was mortgaged with the bank and therefore, both of them, in conspiracy with each other, allured the complainant that the property is free from all encumbrances and entered into an agreement to sell.

The agreement to sell, photocopy of which is taken on record as Mark 'A', nowhere reflects that it is mentioned by the petitioners that the property is mortgaged with the bank and therefore, by posing that the house is free from all encumbrances, have cheated the complainant, who is an old lady aged about 70 years, of her money.

It is also a matter of fact that the bank has now taken possession of the property, after declaring the loan taken by the petitioner as NPA and therefore, contention of the petitioners, that they are still ready to execute the sale deed in favour of the complainant, is totally misplaced.

After going through the contents of FIR and finding that prima facie offence of cheating and dishonest inducement is made out, I find no ground to grant anticipatory bail to the petitioners.

Accordingly, both these petitions are dismissed.

Nothing observed in this order shall have any bearing or expression of my opinion on merits of the case.

[ARVIND SINGH SANGWAN]
JUDGE

17.07.2020
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No