

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

**CRM-M-2383-2021
Date of Decision : 18.01.2021**

Shahabuddin and another

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Rajesh Lamba, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

This is a petition under Section 438 Cr.P.C. for grant of bail to the petitioners in FIR No.298 dated 08.07.2020, under Sections 120-B, 406, 420, 506 of the IPC, registered at Police Station, Sector-58, District Faridabad.

Learned counsel for the petitioners submits that as per allegations in the FIR, the complainant had made a payment of Rs.70,57,250/- on 20.02.2013 to co-accused Chandersen, while entering into an agreement to purchase in which complainant had half share with petitioner.

Learned counsel for the petitioners further submits that it is an admitted case of the party that petitioner No.1 Shahabuddin and complainant were running a business in partnership along with one Iqbal.

Learned counsel for the petitioners further submits that initially a complaint was given on 30.07.2018 to the Commissioner of Police, Faridabad, in which no such allegation of making payment to Chandersen was made by the complainant and in the said complaint, the Police/Economic Offence Wing

Ballabgarh Zone, Faribabad recorded the statement of the petitioner that he has in fact purchased 20 kanals and 17 marlas of land on 18.09.2017 after making payment and the disputed agreement to sell was for 6 kanals and 15 marlas of land.

Learned counsel for the petitioners further submits that later on, after the inquiry on 27.12.2019, it was recommended that the aforesaid complaint be filed as it is a civil dispute.

Learned counsel for the petitioners further submits that even thereafter, another complaint was filed on 13.03.2019 with similar allegations and in that complaint, again the statement of the sellers Chandersen, Amit and one more seller Sunder was recorded on 25.03.2019. Chandersen stated that entire payment was made by petitioner No.1 Shahabuddin, whereas Amit has stated that on receiving the payment from Sahab Khan, he has executed a GPA in his favour.

It is further submitted that in fact as per the understanding between the partners, the payments were made and some sale deeds were executed and GPA was also executed.

Learned counsel for the petitioners refers to one of the complaints, in which, the complainant himself has stated that w.e.f. 02.02.2015, the complainant, Iqbal as well as petitioner No.1 Shahabuddin started working separately.

Learned counsel for the petitioners submits that with regard to an offence of 2013, the complainant, now with an improved version, has got the present FIR registered with the allegation that entire payment was made by him.

Learned counsel for the petitioners further submits that in fact it is a dispute *inter se* the partners which was in existence prior to 2015 and the

complainant has a civil remedy either to seek rendition of account or get the specific performance on the basis of agreement, if the limitation permits.

Learned counsel for the petitioners submits that the present FIR has been registered knowingly that the limitation of filing a suit has already expired.

Notice of motion.

Mr. Sumit Jain, Addl. A.G., Haryana and Mr. Kunal Dawar, Advocate, who are also appearing through video conferencing, accept notice on behalf of the respondent-State and complainant, respectively.

Learned State counsel, assisted by learned counsel for the complainant, submits that in fact there was an agreement in which complainant had 1/3 share, whereas, some part was sold by the complainant to different persons who have also raised construction on part of the land and in pursuance of the land sold by the complainant, he asked the petitioner to execute the sale deed, to which, petitioner denied and therefore, the present FIR has been registered on account of committing fraud/cheating.

However, learned State counsel could not dispute that in the previous two inquiries conducted by the Police, there was no allegation of Rs.75 lakh having been paid by the complainant to Chandersen and it is also not disputed that earlier two complaints were rejected by the police observing that it is a civil dispute between the parties.

After hearing learned counsel for the parties, without making any comment on the merits of the case, considering the aforesaid submissions of learned counsel for the parties, the present petition is allowed and the petitioners are granted concession of anticipatory bail subject to the conditions envisaged under Section 438(2) Cr.P.C.

However, it will be open for the Investigating Officer to call upon the petitioners to join investigation, if required, by issuing them a written notice in this regard.

18.01.2021

Waseem/Chetan

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No