

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

CRM-M-6872 of 2021.

Decided on:- February 18, 2021.

Ram Bachan Chaudhary and another

.....Petitioners.

Versus

State of Punjab and another

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Naresh Kumar Bansal, Advocate
for the petitioners.

Mr. Avtar Singh Sandhu, Addl. A.G., Punjab.

Mr. Surinder Singh Siao, Advocate
for respondent No.2-complainant.

HARI PAL VERMA, J.

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

Petitioners, namely, Ram Bachan Chaudhary and Smt. Namarta Bachan Chaudhary have filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.40 dated 22.12.2020 under Sections 406, 420, 448 and 120-B IPC registered at Police Station NRI, District SAS Nagar (Mohali).

The aforesaid FIR was registered against the petitioners on the complaint made by respondent No.2-Darshan Singh Lally (NRI) to Additional

Director General of Police, NRI Wing, Punjab. As per the FIR, the complainant, who is a permanent resident of England, had entered into an agreement to sell dated 22.02.2018 with the petitioners so as to purchase the Flat No.124-A, First Floor, Motia City, Singhpura at Zirakpur. The complainant had made the full and final sale consideration to the petitioners, but they have neither executed the sale deed of the said flat in favour of the complainant nor returned the amount to the complainant. In this manner, the petitioners, have committed fraud and cheated the complainant.

Learned counsel for the petitioners has contended that the dispute between the parties is purely of civil nature and the petitioners have been falsely implicated in the present case at the behest of respondent No.2-complainant. By way of agreement to sell dated 22.02.2018, which was signed by the parties on 24.02.2018, the petitioners agreed to sell their house i.e. Flat No.124-A, First Floor, Motia City, Singhpura, Zirakpur to the respondent No.2-complainant for a total sale consideration of Rs.27,25,000/-.

He has further argued that as per the agreement to sell dated 22.02.2018, which is in Punjabi language, an earnest money of Rs.2,75,000/- was given in cash to the petitioners in the presence of witnesses. However, in fact, no such cash amount was given to the petitioners on 22.02.2018, rather an amount of Rs.2,50,000/- was transferred on 23.02.2018 by NEFT in the Axis bank account of the petitioners by the respondent No.2-complainant. The petitioners do not know Punjabi language and the agreement was signed by them in good faith regarding the payment of cash instead of bank transfer.

He has further contended that as per the agreement, the total sale consideration of Rs.27,25,000/- was to be transferred upto 22.03.2018, failing

which the agreement was liable to be cancelled and the amount received by the petitioners was to be forfeited. Since the complainant did not make the payment within the stipulated time, as prescribed in the agreement to sell, the agreement was cancelled and the earnest money paid by the complainant was forfeited. The respondent No.2-complainant made the last payment of Rs.4,50,000/- on 27.03.2018, which is beyond the date, as mentioned in the agreement to sell and also the balance amount of Rs.25,000/- has not been paid till date, the agreement was cancelled and amount paid by the respondent No.2-complainant was forfeited on 22.3.2018.

Learned counsel for the petitioners has further argued that the respondent No.2-complainant has moved different complaints before various Police Stations at Zirakpur, NRI Cell Mohali and Jalandhar with the sole purpose to harass and humiliate the petitioners. The petitioners had filed a petition i.e. *CRM-M-4724-2020* titled as *Ram Bachan Chaudhary and another Vs. State of Punjab and others* before this Court. In the said petition, this Court vide order dated 14.02.2020, granted relief to the petitioners and the police authorities were directed to give one week prior notice before arresting the petitioners.

Learned State counsel and learned counsel for respondent No.2-complainant have argued that the petitioners have cheated the complainant as after receiving the entire sale consideration, the petitioners neither gave possession of the property to the complainant nor they returned his money and they are not entitled to anticipatory bail.

I have heard learned counsel for the parties.

In the present case, it has been pleaded by the petitioners that the respondent No.2-complainant was required to make full and final payment till 22.03.2018. However, they have accepted the amount of Rs.4,50,000/- on 27.03.2018. In this manner, when the petitioners have accepted the payment on 27.03.2018 and this amount is still retained by the petitioner, then it is deemed that the agreement is extended upto 27.03.2018. Petitioners have not made any efforts to return the amount received by them after 22.03.2018.

Hon'ble Supreme Court in ***P. Chidambaram Versus Directorate of Enforcement (SC) 2019 (4) RCR (Criminal) 875*** has observed that the power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The anticipatory bail is not to be granted as a matter of rule, rather, it has to be granted only when the Court is convinced that the exceptional circumstances exist to resort to such extraordinary remedy. The relevant paragraph No.67 of the said judgment read as under:

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purpose. Power under Section 438 Cr.P.C 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail.

Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the Court is convinced that the exceptional circumstances exist to resort to that extraordinary remedy.”

Section 438 Cr.PC makes it clear that in non-bailable offence, the person apprehending arrest is free to apply to this Court or Sessions Court with a prayer that in the event of such arrest, he shall be released on bail. This Court cannot lose sight of the law laid down by Hon’ble Supreme Court in the case of ***Jai Prakash Singh Versus State of Bihar and another 2012(2) RCR (Criminal) 251*** wherein it has been held that anticipatory bail can be granted only in exceptional circumstances where Court is prima-facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty as anticipatory bail is an extra-ordinary privilege. The said principle has also been indicated in case of ***D.K. Ganesh Babu Versus P.T. Manokaran 2007(2) RCR (Criminal) 161*** and ***Union of India Versus Padam Narain Aggarwal (2008) 13 SCC 305***.

Thus, this Court finds that the petitioners have not come to the Court with clean hands. There is no dispute that an amount of Rs.4,50,000/- has come in the bank account of the petitioners on 27.03.2018, though this amount was required to be paid till 22.03.2018 i.e. the outer date of the agreement. However, after getting this amount credited in their account, the petitioners had not made any attempt to get the money refunded to the complainant, which shows the criminal intent of the petitioners. The relief of grant of anticipatory bail under Section 438 Cr.PC is to be sparingly exercised in extraordinary circumstances.

Thus, from overall conduct of the petitioners and the factum of acceptance of consideration amount beyond the date of agreement, it can be inferred that the petitioners were having a criminal intention from the very beginning. It is well settled that prayer to grant bail under Section 438 Cr.PC is to be sparingly exercised in extra-ordinary circumstances. Thus, keeping in view the aforesaid discussion and entire conspectus of facts, no ground is made out to grant anticipatory bail to the petitioners.

The present petition is, accordingly, dismissed.

February 18, 2021
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No