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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRM-M-29312 of 2021(O&M)

Date of decision : August 26, 2021

Kamal Kishore Malhotra

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate and
Ms. Kirti Ahuja, Advocate and
Mr. Edward George, Advocate
for the petitioner.

Mr. Karan Garg, AAG., Haryana.

Ms. Puja Chopra, Advocate
for the complainant.

(Through Video Conferencing)

Harsimran Singh Sethi, J (oral).

The present petition has been filed under Section 439 Cr.P.C for grant of regular bail to the petitioner, in respect of FIR No. 218 dated 17.05.2021 for the offences under Sections 406, 420, 467, 468, 471, 201 and 34 IPC registered at Police Station DLF, Sector 29, District Gurugram.

Learned Senior counsel for the petitioner argues that the allegations alleged against the petitioner are that the petitioner executed an agreement with the complainant for selling a house, which belongs to the petitioner, for a sum of Rs. 4.25 crores on 18.3.2020 despite the fact that the said property had already been sold by the petitioner to one Gurminder

Singh on 08.11.2019.

Learned Senior counsel further submits that the main allegation hinges upon the execution of the said agreement to sell dated 18.3.2020 and the petitioner is denying the execution of the said agreement in all possible manners.

Learned Senior counsel further submits that even after a period of three months of the registration of the FIR, the original agreement to sell dated 18.03.2020 has not seen light of the day as of now and has not been produced before the Investigating Agency by the complainant to support the allegations alleged in the FIR. Learned Senior counsel for the petitioner argues that nothing has come on record during the investigation so far to substantiate the allegations that petitioner executed the agreement to sell dated 18.3.2020 in favour of the complainant, hence petitioner cannot be kept behind bars on the basis of said bold allegations, especially keeping in view the facts and circumstances of the case.

Learned counsel for the respondents-State concedes that as of now, the original agreement to sell dated 18.3.2020, which is actually the basis of the allegations against the petitioner, has not been produced before the investigating agency for the reason that according to the complainant, the same was in the possession of the petitioner himself and the petitioner has destroyed the same but the investigating officer has got the statements of the stamp paper vendor and the notary public to support the execution of the said agreement.

Learned state counsel submits that the signatures on the register of Notary Public as well as Stamp Vendor has been affixed in such a manner that as of now those signatures does not disclose the identity of the

executant.

Learned counsel appearing on behalf of the complainant submits that it is a case where, the complainant, who under emotions wanted to help the petitioner out of his distress, has lost his hard earned money including the jewellery worth 1crores 49 lakhs, which was paid to the petitioner under the said agreement to sell dated 18.3.2020.

Learned counsel for the complainant concedes that she does not have the original copy of the agreement to sell dated 18.3.2020 but only has a photocopy of the same which has already been produced before the investigating authorities and the original agreement to sell remained with the petitioner, which is not being produced by him to save himself from the allegations alleged against him in the FIR.

I have heard the counsel for the parties and have gone through the record of the case with their able assistance.

The allegation against the petitioner is that he had sold his house to the complainant under the agreement to sell dated 18.3.2020 for a consideration of Rs. 4.25 crores and the said consideration was paid by the complainant with approximately Rs.50,000/- in cash and the remaining in the form of jewellery amounting to approximately Rs. 1 crore 49 lacs, though the said property had already been sold by the petitioner to one Gurminder Singh vide agreement to sell dated 08.11.2019.

As of now, the original agreement to sell dated 18.3.2020, which is a material document, has not been produced by the complainant before the investigating agency. Allegations alleged against the petitioner in the FIR are only the allegations as of now, which are yet to be proved during the trial. No useful purpose would be served in keeping the

petitioner, who is a senior citizen, behind the bars any further as of now as the trial is likely to take some time before it concludes especially when the learned counsel for the petitioner has undertaken before this Court that in case the petitioner is granted the benefit of regular bail, the petitioner will maintain a good conduct while on bail and will not influence the investigation or witness and trial in any manner.

It has been brought to the notice of the Court that a co-ordinate Bench of this Court has already extended the benefit of interim bail to the co-accused i.e. wife of the petitioner while passing order in CRM-M-21426-2021.

Keeping in view the facts and circumstances, which have been narrated hereinbefore, and the fact that the petitioner has been in custody since 09.06.2021, petitioner has made out a case for the grant of regular bail.

In view of the above and without commenting upon the merits of the case, it is directed that the petitioner be released on regular bail, if not required to be detained in any other case, subject to the satisfaction of the trial Court/Duty Magistrate concerned.

Learned counsel for the petitioner undertakes that petitioner will not influence the trial in any manner and in case of default of the above undertaking, the investigating agency/complainant gets any cogent evidence that the petitioner is violating the undertaking recorded hereinbefore and is influencing the trial or the witnesses, they will be at liberty to approach appropriate authority including this Court for reconsideration of this order.

However, it is made clear that anything observed herein shall

not be construed to be an expression of any opinion on the merits of the case.

(HARSIMRAN SINGH SETHI)
JUDGE

August 26, 2021
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No