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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision:21.09.2021

1. CRM-M-54238-2018(O&M)

BRIJESH GOSWAMI

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

2. CRM-M-17573-2019(O&M)

BIJENDER DUTT KAUSHIK

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Sanjay Vashisth, Advocate
for the petitioner (in CRM-M-54238-2018).

Mr. Kartik, Advocate for
Mr. Baljeet Beniwal, Advocate
for the petitioner (in CRM-M-17573-2019).

Mr. Anant Kataira, DAG, Haryana.

None for the complainant.

RAJ MOHAN SINGH, J. (Oral)

Vide this common order CRM-M-54238-2018 titled
Brijesh Goswami Vs. State of Haryana & CRM-M-17573-2019
titled Bijender Dutt Kaushik Vs. Haryana are being disposed of.

Since both these petitions have arisen out of the same

FIR, therefore common facts are being recorded.

Petitioner(s) seek grant of anticipatory bail under Section 438 Cr.P.C in case bearing FIR No.563 dated 03.10.2015 registered under Sections 120-B, 409, 420, 467, 468, 471 IPC and Section 7/12/13, at Police Station Central Faridabad, District Faridabad Haryana.

Notice of motion was issued on 07.12.2018 in CRM-M-54238-2018, by passing the following order:-

Counsel for the petitioner contends that even as per the allegations of the complainant, there was no misrepresentation made by the petitioner. The complainant was clearly told about all the amounts; separately; qua the stamp duty, expenses and the amount which was allegedly demanded by the Tehsildar. The complainant himself paid those amounts; as an attempt to get his deed registered. It is also not disputed that his papers were duly entered in the online process of registration of the deed. Even the photographs of the vendors, vendees and the witnesses were taken there. The stamps for the stated amount were duly purchased. Even the expenses of registration were duly deposited by the petitioner. Therefore, there is no reason or occasion for the petitioner being involved in any fraud/fabrication. The petitioner only assisted the complainant in his capacity as an advocate. The Tehsildar, who is alleged to have registered the said deed; has already been granted the concession of anticipatory bail by the trial Court itself.

Notice of motion for 26.02.2019.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

07.12.2018
renu

(RAJBIR SEHRAWAT)
JUDGE

Perusal of the aforesaid order would show that the petitioner has come with a definite stand that the sale deed was duly registered. Papers were duly entered in the online process of registration. Photographs of vendors, vendees and other witnesses were duly affixed. Stamps were duly purchased and even expenses for registration were duly deposited by the petitioner. Allegations of fraud and fabrication have been denied altogether. Tehsildar who had registered the sale deed has been granted anticipatory bail by the Court of Sessions. The stand of the learned State counsel throughout is that though the petitioner has joined the investigation but he has not co-operated with the Investigating Officer. As against this, the stand of learned counsel for the petitioner is that in an effort to save the Tehsildar the blame has been shifted over to the petitioner and the Investigating Officer was reluctant throughout to allow the petitioner to join in the investigation. Petitioner even got the conversation between petitioner and Investigating Officer recorded. The petitioner sought time on 26.02.2019 to place on record the transcript of the said conversation.

On 15.05.2019, learned counsel for the petitioner submitted before the Court that the Investigating Officer was creating hurdles for the petitioner in joining the investigation. With the intervention of the Judicial Magistrate, petitioner could join the investigation twice.

Learned counsel for the petitioner submitted before the Court that the Investigating Officer of the case has tried to play mischief only to divert the investigation in order to save the main culprit i.e. Tehsildar who had registered the document.

Perusal of the record would also show that the offences under Prevention of Corruption Act 1988 were deleted against

the Tehsildar and with the change of the Investigating Officer, the investigation was being conducted by new Investigating Officer. The Court even directed the earlier, Investigating Officer i.e. ACP Atma Ram to remain present in Court even after taking over investigation by the Investigating Officer i.e. ACP Anil Kumar, who was discharged from the proceedings vide order dated 03.12.2019 and even ACP Atma Ram was directed to remain present in Court to explain as to why he made a wrong statement before the Court.

The perusal of the order dated 04.03.2020 would show that in compliance of the order dated 03.12.2019, ACP Atma Ram was present in Court. However, ACP Anil Kumar, SI Rajbir Singh, SI Berander and ASI Sazid Hussain were also present in Court. ACP Atma Ram had explained that the assertion made by him, which was subsequently found to be false, was made under a wrong impression and out of confusion. He expressed his regrets and his presence was exempted, unless directed otherwise by the Court.

Now, In view of status report filed by way of an affidavit of Mohinder Singh, HPS, Assistant Commissioner of Police, Central, Faridabad on behalf of State of Haryana, it has come to fore that Krishan Kumar Tehsildar had also joined the investigation and his specimen signatures were sent to Regional Forensic Science Laboratory Bhondsi, Gurugram. The laboratory further asked for more specimen initials of the Tehsildar as well as contemporaneous admitted initials and more specimen signature of the person concerned i.e. the Tehsildar, but the Tehsildar has refused to give his further specimen signature. An application was filed by the prosecution before the Court, but the Tehsildar did not give his consent to

give his specimen signature for further examination. The registration of sale deed is solely dependent upon proof of signing the same by the Registering Authority as the Tehsildar has not co-operated with the prosecution in giving his specimen signature/specimen initials as well as contemporaneous admitted initials and more specimen signatures to the prosecution. The petitioner has joined the investigation on two occasions with the intervention of the Magistrate.

In CRM-M No.17573 of 2019 notice of motion was issued on 16.04.2019 and interim direction was also issued.

At this stage without making any observation on merits of the case, I deem it appropriate to confirm the orders dated 07.12.2018 and 16.04.2019 as absolute. Ordered accordingly. Petitioner(s) shall keep on joining the investigation as and when required to do so and they shall abide by the conditions as envisaged under Section 438(2) Cr.P.C. Non-co-operation on behalf of accused during investigation, if proved, would entail in cancellation of anticipatory bail in accordance with law.

Both the petitions stand disposed of.

All pending applications are also being disposed of.

21.09.2021
Amandeep

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No