

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

CRM-M-34482-2020(O&M)

Date of Decision : -11.1.2021

Sarvan Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE H.S. MADAAN

Present: Mr.Tushar Gautam, Advocate
for the petitioners.

Mr.Tanuj Sharma, AAG, Haryana.

Mr.D.S. Matya, Advocate
for the complainant.

H.S.MADAAN, J. (ORAL)

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioners Sarvan Singh, aged about 66 years and Ajay, aged about 43 years, residents of village and P.O. Dudhola, Tehsil and District Palwal, both being accused in FIR No.451 dated 3.9.2020 for the offences under Sections 406, 420 and 120-B IPC, registered with Police Station City, Palwal.

Briefly stated, the facts of the case as per the

prosecution story are that complainant Surender Singh son of Hardya Ram, resident of village Nagla Jogiyan, Tehsil Ballabgarh, District Faridabad by submitting a written complaint to Superintendent of Police, Palwal sought taking of action against Sarwan Singh, Smt. Indra Devi, Ajay, residents of village Dudhola as well as Prem Dutt, Lambardar resident of village Allika, Tehsil and District Palwal. *Inter alia*, in the complaint, complainant submitted that Sarwan Singh aforesaid being owner in possession of $\frac{1}{2}$ share of land measuring 15 kanals 0 Marla situated at Patli Kalan, Tehsil and District Palwal had entered into an agreement to sell the land with the complainant at the rate of Rs.70 lakhs per acre for a total consideration of Rs.1,31,25,000/- on 29.1.2016, receiving a sum of Rs.1,25,00,000/- as earnest money vide different receipts, the final date for registration of sale deed was fixed as 28.3.2017. The complainant approached Sarwan Singh for the purpose of execution and registration of sale deed in his favour but Sarwan Singh put off the matter. The complainant accordingly filed a civil suit bearing No.2085-2020 titled 'Surender Singh Versus Sarwan Singh' in the Court at Palwal, where Sarwan Singh had put in appearance on 8.6.2020 and sought adjournment for filing of power of attorney and written statement. Despite the suit being pending in the Court of Additional Civil Judge, Palwal, Sarwan Singh with a mala fide intention to play fraud with the complainant in conspiracy with his other co-accused sold the land to one Indra Devi wife of Ranbir Singh and Ajay and Prem Dutt, Lambardar had attested the sale deed. The mutation on the basis of said sale deed had been sanctioned. On the basis of that written complaint, formal FIR was

recorded.

Apprehending their arrest in this case, the petitioners had approached the Court of Sessions at Palwal by filing an application for grant of pre-arrest bail. Their such application, which was assigned to learned Additional Sessions Judge, Palwal was however dismissed vide order dated 13.10.2020.

Feeling aggrieved, the petitioners had knocked at the door of this Court craving for grant of similar relief by filing the instant petition, notice of which was issued to the respondent - State.

The request of the petitioners for grant of pre-arrest bail is being opposed by learned State counsel as well as counsel for the complainant.

I have heard learned counsel for the parties besides going through the records.

Learned counsel for the petitioners stated that the agreement on which the complainant is relying upon is a forged and fabricated document; the complainant has played fraud with the petitioner Sarwan Singh; no amount has been paid to him. Rather according to the complainant, he had paid the amount in advance without any agreement in writing, which is difficult to believe. The petitioner No.1 is an educated person, who appends his signatures and does not put his thumb impressions. The suit for specific performance has been filed after more than three years of the alleged agreement. The petitioners have since joined the investigation in terms of the directions given vide order dated 18.11.2020 to them by this Court and no recovery is to be effected from

them.

Learned State counsel on instructions had admitted the petitioners having joined the investigation.

Learned counsel for the complainant has however opposed the petition arguing that the petitioners have cheated the complainant of substantial amount of more than Rs.1 crore and petitioner Sarwan Singh by executing the sale deed in favour of Indra Devi after getting notice of civil suit filed by the complainant in conspiracy with his co-accused has committed fraud with the complainant besides cheating him. Petitioner No.2 Ajay is son of petitioner No.1 Sarwan Singh and he having full knowledge of facts of the case had attested the sale deed executed by Sarwan Singh in favour of Indra Devi. With regard to the payment of money, he has referred to copies of various receipts and other documents placed on file by him today.

After hearing the rival contentions and going through the record, I find that the dispute between the parties is of civil nature, regarding which the civil litigation is pending between them. If the complainant is successful in proving that petitioner Sarwan Singh being owner of the disputed property had entered into a legal and valid agreement to sell with him for a lawful consideration receiving a substantial part thereof and that the complainant/plaintiff has been ready and willing to perform his part of contract and further that it was petitioner No.1 Sarwan Singh, who backed out of the agreement and subject to the finding that the suit is within limitation, the complainant/plaintiff may be successful in that litigation and his rights shall not be prejudiced by

Sarwan Singh executing a sale deed out of the disputed land in favour of Indra Devi in view of doctrine of lis pendens. It is doubtful as to whether offences of fraud and cheating of criminal breach of trust are disclosed from the facts and circumstances of the case. The custodial interrogation of the petitioners is not found to be necessary on account of their having joined the investigation as per directions issued by this Court. Further no recovery is to be effected from them. The complainant having filed a suit for specific performance against petitioner No.1 cannot possibly come up with a plea that the amount alleged to have been paid by him to petitioner Sarwan Singh as earnest money be got refunded to him because that may adversely affect his right in the civil litigation. Therefore, the petition calls for acceptance. The interim bail granted to the petitioners on 18.11.2020 is made absolute, subject to their fulfilling following conditions:

- (i) that the petitioners shall make themselves available for interrogation by a police officer as and when required;
- (ii) that the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) that the petitioners shall not leave India without the previous permission of the Court; and
- (iv) that the petitioners shall surrender their passports before the Investigating Officer and if they are not having passport, then shall file the affidavit in that regard.

In case the petitioners violate any term and condition on which the bail has been granted to them, the prosecution would be entitled to apply for cancellation of bail to them.

The petition is allowed accordingly.

11.1.2021
Brij

(H.S. MADAAN)
JUDGE

Whether reasoned/speaking :	Yes/No
Whether reportable :	Yes/No