

201

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-709-2021 IN
CRM-M-35461-2020 (O&M)
Date of decision:15.01.2021

Mohan Lal Kakkar

... Petitioner(s)

versus

State of Punjab

... Respondent (s)

Coram: *Hon'ble Mr. Justice Jasgurpreet Singh Puri*

Present: Mr. Preetinder Singh Ahluwalia, Advocate
for the petitioner.

Mr. Mehardeep Singh Dullat, Addl. AG, Punjab.

Mrs. Manjari Joshi, Advocate
for complainant/respondent

Through Video Conference

Jasgurpreet Singh Puri, J.(Oral)

CRM-709-2021

For the reasons mentioned in the application, the same is allowed.

Reply filed by the respondent is taken on record.

Main case:-

The present petition has been filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail to the petitioner in FIR No.167 dated 03.09.2020, under Sections 406 and 420 of the Indian Penal Code, 1860, registered at Police Station Navi Baradari District Police Commissionerate, Jalandhar.

It has been argued by the learned counsel for the petitioner that he has been falsely involved in the present FIR and the offences under Sections 406 and 420 IPC are not made out against him on the face of it. He has further submitted that at the most, it was a case of civil dispute to which criminal flavour has been given.

A complaint was filed by the complainant against one Smt. Poonam Kakkar wife of the petitioner namely Mohan Lal kakkar that the petitioner is running travel agency and that he was in dire need of money and wanted to sell his shop against the consideration amount of Rs. 35,00,000/-. The complainant, therefore, paid earnest money of Rs. 30,00,000/- and it has been further alleged in the FIR that the petitioner had entered into an agreement on 01.06.2016 and also took another amount of Rs. 44,00,000/- as earnest money out of total sale consideration of Rs. 60,00,000/- and therefore, it leads to breach of faith because neither the sale deed was executed nor the money was returned.

Learned counsel for the petitioner has argued that the agreement was made with the wife of the petitioner on 20.09.2013 and date for executing the sale deed was for 20.09.2014 which was made allegedly with the wife of the petitioner and out of Rs. 35,00,000/- which was the total sale consideration, an amount of Rs. 30,00,000/- has already been paid by the wife of the petitioner. Thereafter the alleged agreement which is stated to be with the petitioner on 01.06.2016 which was about three years after the first agreement with the wife of the petitioner cannot be said to be an agreement which actually could have been executed. It has been further submitted by the learned counsel for the petitioner that this agreement dated 01.06.2016 was never entered into between the petitioner and the complainant. It is further submitted that a suit for specific performance against the petitioner was filed by complainant before the learned Civil Court in which interim orders were passed in favour of the complainant under Order 39, Rule 1 & 2 of the Code of Civil Procedure.

Learned counsel for the petitioner has submitted from the reply which has been filed by the petitioner in the aforesaid civil suit, vide Annexure

P-6 that the petitioner had rather taken up a stand that he had been borrowing

money from the complainant from time to time and the same had been returned in due course. The complainant had obtained the signatures of the petitioner on the alleged agreement dated 01.06.2016 which was kept as a security of a loan amount and out of the total amount of Rs. 44,00,000/-, the complainant had already received Rs. 34,00,000/- and therefore had denied the execution of the alleged agreement dated 01.06.2016.

Further more learned counsel for the petitioner submitted that at the most the present dispute was of civil dispute arising between the parties and therefore the present FIR is abuse of the process of law. He further submitted that so far as the agreement with the wife of the petitioner is concerned, the earnest money has already been returned and so far as the second agreement is concerned, the execution of the same has been denied by the petitioner and the civil suit is pending.

Notice of motion in the present case was issued on 12.11.2020 and the petitioner was granted interim protection subject to terms and conditions in the aforesaid order.

Today, learned counsel for the State has stated on instructions from ASI Manohar Lal that the petitioner has joined the investigation and has cooperated with the investigation process, in pursuance of the directions issued by this Court. He has further submitted that the petitioner is not required for custodial investigation. However, learned counsel for the complainant has opposed the grant of relief of anticipatory bail to the petitioner on the ground that the money of the complainant is stuck with the petitioner and it is required to be recovered and therefore, the present petition may be dismissed.

Learned counsel for the complainant has submitted that it is a case where the petitioner has not only committed fraud with the Bank but also with

the complainant.

I have heard the learned counsel for the parties.

So far as the stand taken by the learned counsel for the complainant that the money is required to be recovered by the police is concerned, it would not be sustainable because the criminal proceedings are not meant for recovery purposes but at the time of consideration of anticipatory bail various other factors are to be seen as to whether there is any likelihood that petitioner may tamper with any evidence or influence any witnessess or whether he can flee from justice. Various other factors are required to be seen as to whether custodial investigation is required or not. However, in the present case, the stand which has been taken by the State is that the petitioner has already joined the investigation and he is fully cooperating with the investigation process and it is a categorical stand of the State that he is not required for any custodial investigation and therefore, it will not be in the interest of justice to deny bail to the petitioner.

Consequently, the present petition is allowed. The order dated 12.11.2020, whereby petitioner was granted interim anticipatory bail is hereby made absolute and all the conditions mentioned therein would continue to apply.

15th January, 2021

shabha

[JASGURPREET SINGH PURI]
JUDGE

<i>Whether speaking/reasoned</i>	<i>:-</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>:-</i>	<i>Yes/No</i>