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

CRM-M-52447-2021

Date of decision : 20.12.2021

Om Prakash

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.533 dated 09.12.2020 registered under Sections 406, 420, 379, 120-B of the Indian Penal Code, 1860 at Police Station Dabua, Faridabad, Haryana.

Learned counsel for the petitioner has submitted that in the present case, only allegations against the petitioner in the FIR are that the petitioner had entered into two agreements to sell with Sube Singh and Sunita with respect to total land measuring 300 square yards i.e. 12 marlas and has referred to the agreement to sell dated 02.05.2014 (Annexure P-2) to show that the petitioner had an agreement to sell in his favour from Shreechand of land measuring 2 kanals 10 marlas and thus,

the said two agreements to sell which were executed were of land lesser than 2 kanals 10 marlas and the petitioner was entitled to enter into the said two agreements to sell. It has further been highlighted that in the agreement to sell entered into by the petitioner in favour of third person, there was a specific mention that the petitioner was an agreement to sell holder and there was no mention that he was owner of the property. It is further argued that at any rate, the dispute in question is a civil dispute and the petitioner has been in custody since 01.10.2021 and challan in the present case has already been filed and there are 29 witnesses and the petitioner is not involved in any other case and thus, prays for grant of regular bail to the petitioner.

Notice of motion.

On advance notice, Mr. Manish Dadwal, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of regular bail to the petitioner and has on instructions from ASI Sunil Kumar, submitted that in addition to the two agreements to sell mentioned in the FIR, the petitioner had also entered into three more agreements with Rameshwar for 100 square yards, Brij Lal for 100 square yards and Sumit for 200 square yards and thus, total land which the petitioner had agreed to sell by virtue of the said agreements totals to 760 square yards i.e. 28 marlas. It is argued that as per the *Patwari* report, the petitioner and the other co-accused are not owners of the property.

Learned counsel for the petitioner in rebuttal has submitted that even in case, the said agreements to sell are taken into consideration, then also, the land which the petitioner has alleged to have entered into agreement to sell was less than 2 kanals and 10 marlas regarding which he had agreement to sell in his favour dated 02.05.2014. It is further contended that the petitioner had, in the said agreement to sell, not even claimed that he is the owner rather stated that he has an agreement to sell in his favour and thus, no cheating has been committed by him. It is further stated that the present FIR had been registered after a delay of five years and all the offences are triable by the Magistrate.

Keeping in view the abovesaid facts and circumstances, moreso, the facts that agreement to sell entered into by the petitioner in favour of third person is lesser than the land measuring 2 kanals and 10 marlas regarding which the petitioner has himself had an agreement to sell from one Shreechand in his favour and in the agreement to sell with the complainant, it had been mentioned by the petitioner that the petitioner is an agreement to sell holder and also the fact that there is delay of 5 years in registration of the FIR and the present dispute has civil tappings and the fact that the petitioner has been in custody since 01.10.2021 and challan in the present case has already been filed and there are 29 witnesses out of which none have been examined, thus, the conclusion of the trial is likely to take time moreso in view of COVID-19 pandemic and the fact that the petitioner is not involved in any other case, this Court deems it appropriate to allow the present petition and grant bail

to the petitioner.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

20.12.2021

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**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No