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

CRM-M No.55716 of 2019

Date of Decision:03.08.2021

Pawan Kumar

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr.Akshay Rana, Advocate
for the petitioner.

Mr. Amar Ashok Pathak, Addl, AG Punjab.

Ms.Swati Verma, Advocate
for the complainant.

RAJ MOHAN SINGH, J. (Oral)

The case has been taken up for hearing through video conferencing.

Petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C in case bearing FIR No.216 dated 01.12.2019 registered under Sections 420 and 506 IPC Police Station Division No.3, Ludhiana.

Notice of motion was issued on 01.01.2020 by passing the following order-:

“Learned counsel for the petitioner contends that even as per bare perusal of the FIR in question, the controversy gives rise to civil consequences. An agreement to sell was entered into in respect of plot/house measuring 50 sq. yards for a total sale consideration of Rs.8,00,000/-, out of which an amount of Rs.3,50,000/- was paid as earnest money on 04.12.2017 and

the target date for execution of sale deed was fixed as 15.02.2018. Bilateral obligations could not be materialized. Petitioner has returned an amount of Rs.3,00,000/- through cheques in the account of the complainant and remaining amount of Rs.50,000/- was paid in cash and thereafter, original agreement to sell was destroyed by the complainant party.

Notice of motion for 26.02.2020.

In the meanwhile, petitioner is directed to appear before the SHO/Investigating Officer to join investigation on 15.01.2020 at 11.00 a.m. and in the event of his arrest, he shall be enlarged on ad interim bail, on his furnishing requisite bail bonds/surety bonds subject to the satisfaction of Arresting Officer. However, petitioner shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.”

Learned counsel for the complainant very vehemently submits that due to some bilateral understanding between the parties an amount of Rs.3,50,000/- was also given in addition to the earnest money which stands refunded to the complainant. The amount lended to the petitioner has not been returned to the complainant so far.

Learned counsel for the petitioner submits that the FIR is silent about any such advance to the petitioner. If the alleged plea is arising out of the collateral proceedings, the same is required to be proved through trial by leading cogent evidence. In the present case even if the controversy is admitted on its face value, the same would give rise to civil consequences. An agreement to sell was executed in respect of plot/house measuring 50 sq. yards for a total sale consideration of Rs.8,00,000/-. An amount of Rs.3,50,000/- was paid as earnest money and the sale deed was to be executed on 04.12.2017. The bilateral obligations could not be materialized and thereafter an amount of Rs.3,00,000/- was paid by the petitioner through

cheques to the complainant and the remaining amount of Rs.50,000/- was also paid through cash. The original agreement was destroyed thereafter.

Learned State counsel on instructions from Investigating Officer admits the aforesaid fact and submits that the petitioner has joined the investigation but the money if any due is to be returned by the petitioner. Petitioner is no more required for further investigation in the case.

Taking into consideration the facts and circumstances of the case, I deem it appropriate to confirm the order dated 01.01.2020, leaving the parties to prove their case during trial. Petitioner shall keep on joining the investigation as and when required to do so and he shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Petition stands disposed of.

03.08.2021

Amandeep

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No