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

CRM-M-830-2022

Date of decision : 11.01.2022

Abhishek Malik

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Munish Behl, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.434 dated 23.12.2021 registered under Section 420 of the Indian Penal Code, 1860 (Sections 406 and 506 of IPC have been added later on) at Police Station Mahesh Nagar, District Ambala.

FIR in the present case had been registered on the statement of Mahesh Kumar who had alleged that one Baljit had been related to him for the last so many years and there were several money transactions between the complainant and the said Baljit. In the year 2016, the said Baljit had borrowed a sum of Rs.15 lacs from the complainant for his personal work and in the year 2018, the said Baljit informed the complainant that he had

sold around 4 kanals of land to the petitioner which was worth Rs.60-70 lacs and the said Baljit was yet to receive money from the said petitioner and the petitioner was avoiding giving money and that in case, the complainant wanted to purchase the land in lieu of Rs.15 lacs which had been paid to Baljit by the complainant then he could get the land from the present petitioner and accordingly, an agreement to sell with respect to two shops was entered into between the petitioner and the complainant in which total consideration was Rs.15 lacs and receipt dated 08.08.2018 with respect to the same was entered into and had further alleged that thereafter it was learnt that the said shops had already been sold by the petitioner and thus, the present FIR has been registered.

Learned counsel for the petitioner has submitted that in the present case, in the complaint on the basis of which the FIR has been registered, an earlier complaint which was given by the complainant has not been mentioned and it is submitted that the said complaint was given on 01.08.2019 and in the said complaint, the only allegation against the petitioner was that he had agreed to get the registry executed by 31.03.2019 but neither did he get the registry executed nor did he give possession of the same. It is further submitted that on the said complaint, detailed enquiry had been conducted and in the enquiry report, it was found that the complainant or petitioner had not produced any document with respect to their attendance in the Tehsil Office on 31.03.2019 and thus, could not produce any evidence with respect to the complainant being ready and willing to perform his part of the agreement. It was further observed that the matter was of civil nature and thus, the complaint was consigned to the record

room. It is argued that the version given in the present FIR is contradictory to the version given in the earlier complaint as well as in the supporting statement of the complainant and Govind Jaggi. Reference has been made to the said statement, as per which, it has been stated that the complainant-Mahesh Kumar had paid cash amounting to Rs.15 lacs to the present petitioner whereas the version which had been given in the present FIR is that the complainant had to take money from Baljit and it is Baljit who had to take the same money from the petitioner. It is on this account, agreement to sell had been entered into. It is further argued that the present FIR has been registered after a period of three years from the date of alleged agreement dated 08.08.2018. It has further been stated that the petitioner had only taken a loan and that the said loan had been repaid. It is contended that at any rate, the present dispute has civil trappings and the entire dispute is based on the documentary evidence and thus, the custodial interrogation of the petitioner is not required.

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 anticipatory bail to the petitioner and has submitted on instructions from ASI Mahesh Kumar, that in the earlier complaint, the complainant had not mentioned about the fact that the shops had already been sold by the petitioner and it is only in the present FIR that the said allegations had been made and it is further submitted that since the petitioner had already sold the property regarding which the subsequent

agreement was entered into, thus, the offence has been made out.

This Court has heard the learned counsel for the parties and has perused the paper book.

It is apparent from the record that prior to the registration of the present FIR, complaint dated 01.08.2019 was filed by the complainant against the petitioner before the Economic Offence Wing and in the said complaint, it was stated that Rs.15 lacs have been paid to the petitioner and the registry was to be done by 31.03.2019 but the petitioner neither gave possession nor executed the sale deed. As per the report dated 16.08.2019(Annexure P-3), it was observed in the investigation that even the complainant could not produce any prima facie proof much less attendance before the Tehsil Office for getting the Registry done by 31.03.2019 and it was observed that it was a civil dispute and thus, the said complaint was filed and no action was taken on the same. The said complaint and the finding with respect to the same have not been disclosed in the complaint on the basis of which the present FIR has been registered. It is further apparent from the statements dated 14.08.2019 of complainant- Mahesh Kumar (Annexure P-4) and Govind Jaggi (Annexure P-5) that allegations made at the time of earlier complaint were contradictory to the allegations which have been made in the present FIR inasmuch as in the earlier complaint, it had been submitted that amount of Rs.15 lacs was paid in cash by the complainant to the present petitioner whereas the version in the present FIR is to the effect that the complainant had paid money to Baljit and it is the said Baljit who had to take money from the present petitioner and it is on the basis of the same, the agreement was entered into and said

amount of Rs.15 lacs was adjusted. Meaning thereby, that no cash transaction took place between the complainant and the petitioner. Moreover, the present FIR has been registered after a period of three years from the date of alleged agreement/receipt dated 08.08.2018. It is the case of the petitioner that it was a loan transaction and the money had already been paid back. The present case has civil trappings and the same is based on documentary evidence and thus, custodial interrogation of the petitioner is not required. The petitioner is stated to be not involved in any other case.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and in the event of arrest, the petitioner is granted the concession of anticipatory bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C. However, the petitioner shall join the investigation as and when called upon to do so.

It is made clear, in case, the petitioner fails to join the investigation, then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an 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.

11.01.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**