

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6187-2022 (O&M)
Date of decision: 19.05.2022

Major General (Retd.) Shamsheer Singh

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rakesh Nehra, Sr. Advocate with
Mr. Atul Ravish, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. Manjeet Singh, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of anticipatory bail in FIR No.27 dated 24.01.2022 under Sections 406 & 420 IPC, registered at Police Station Urban Estate, Hisar.

While granting interim bail to the petitioner, following order was passed by this Court on 18.02.2022: -

“...In brief, the facts are that the petitioner, who has retired as a Major General from the Indian Army, entered into an agreement to sell his plot No.11-P, Sector 5, Hisar measuring 538 sq. yards

in favour of complainant namely Amit Kukreja. It was also agreed that the date for execution of the sale deed would be 30.06.2020 with the sale price settled at Rs.12,000/- per sq. yards. It was also agreed that any amount of enhancement levied by HUDA on account of land acquisition would be paid by the buyer/complainant. It appears that the sale could not go through on the fixed date on account of extraneous circumstances, one of them being the COVID-19 pandemic. The complainant also made additional payments after the agreed date of executing the sale deed, which payments have been duly acknowledged and received by the petitioner. The said payments were made after the petitioner consented to receive the same, which would tantamount to an extension to get the sale deed executed. The complainant has also deposited an amount of Rs.32 lakhs and odd amount in the office of HUDA through cash transfer in lieu of the enhanced price as assessed by HUDA. It appears that a dispute has arisen between the parties, which resulted into registration of the FIR, for which anticipatory bail sought by the petitioner before the trial Court has been declined.

The petitioner herein has made an offer of returning the amount of Rs.63,77,580/-, which he has received as payment towards sale price and also an amount of Rs.32 lakhs and odd amount deposited with HUDA along with incidental expenses, which offer stands rejected by the complainant herein. The

question now would be whether the petitioner herein can be declined anticipatory bail on account of allegation of cheating. Taking into consideration the facts that genesis of the dispute arises out of a sale agreement and that the petitioner herein has made an offer to return the amount, this Court deems it appropriate to allow the petitioner to join investigation, leaving it open to the complainant to avail other remedies available to him in accordance with law...”

The complainant challenged the aforesaid order before the Hon’ble Supreme Court by way of filing SLP (Crl) No.7056/2022, in which, vide order dated 22.03.2022, it is directed that the matter be decided expeditiously by this Court within four weeks. Thereafter, on 26.04.2022, following order was passed by this Court: -

“During the course of arguments, learned senior counsel for the petitioner has submitted that the petitioner has received an amount of Rs. 53 Lakh from Usha Punia, for which he has got prepared a demand draft of Rs. 53.30 Lakh favouring Usha Punia.

Learned senior counsel further submits that the petitioner has received an amount of Rs. 42 Lakh from complainant Amit Kukreja, out of which, Rs. 35 Lakh has already been paid to him and another amount of Rs. 3.30 Lakh also stands transferred to the bank account of Amit Kukreja through RTGS on 24.02.2022.

Learned senior counsel further submits that the complainant has deposited Rs. 32 Lakh with the HUDA from his own account

and has also spent Rs. 5.70 Lakh for purchasing the stamp papers as well as for Conveyance Deed.

Learned senior counsel further submits that the petitioner has no objection if the complainant withdraws the amount of Rs. 32 Lakh, which according to him, is paid in cash and the petitioner wants to pay the said amount by way of cheque and further has no objection for returning the amount of Rs. 5.70 Lakh spent on the stamp duty.

Learned senior counsel further submits that the petitioner is ready to pay the interest @ 8% per annum w.e.f. the date when the said amount was received by the petitioner including the amount, which has been deposited with HUDA.

However, the aforesaid offer is not acceptable by learned counsel for the complainant, who submits that the complainant is interested in purchasing the plot and will file a suit for possession by way of specific performance in this regard.

In order to clear the ambiguity, it will be appropriate to issue a notice to the Estate Officer, HUDA, Hisar to seek an affidavit giving details of the amount paid by complainant Amit Kukreja and the mode in which the same was paid i.e. through RTGS or bank transfer or in cash. The affidavit as well as status of conveyance deed in favour of the petitioner be filed within a period of ten days from today... ”

In pursuance thereof, separate affidavits have been filed by the

petitioner, Estate Officer, HUDA, Hisar as well as the complainant.

In the affidavit of Estate Officer, HUDA, Hisar, complete details of the amount deposited with regard to disputed plot No.11-P, Sector-5, Hisar, allotted to the petitioner vide allotment letter dated 30.06.2009 are given. This figure is not disputed by learned senior counsel for the petitioner as well as learned counsel for the complainant. The amount so reflected in this affidavit includes the amount of sale price of plot paid by the petitioner.

During the course of arguments, learned counsel for the complainant has submitted that in terms of full and final agreements to sell dated 30.01.2020 and 31.07.2020, executed by the petitioner in favour of Amit Kukreja, the enhanced amount of Rs.38,32,740/- was deposited with HUDA against the aforesaid plot. It is undisputed between the petitioner and the complainant that this amount was paid by the complainant, though primary dispute is that out of the total enhanced amount, an amount of Rs.32,98,000/- was paid in cash by complainant Amit Kukreja as well as subsequent proposed purchaser Usha Punia and remaining amount was deposited either by way of RTGS or other banking modes.

Learned senior counsel for the petitioner has submitted that dispute arose between the parties only on account of deposit of amount in cash, as this amount has been deposited with HUDA towards the plot owned by the petitioner, therefore, he is unable to account for the same and he wants to deposit the amount through bank transactions and he has no objection, if the amount is returned to the complainant by Estate Officer, HUDA, Hisar, after the petitioner deposit the same amount with Estate Officer, HUDA, Hisar.

It has come in the affidavit of Estate Officer, HUDA, Hisar that conveyance deed of plot No.11-P, Sector-5, Hisar has already been executed in the name of the petitioner vide memo dated 24.02.2021. It is not disputed that Rs.5,69,706/- were paid by the complainant for purchase of stamp duty through bank transaction.

As noticed in the previous order, learned counsel for the complainant submits that he is not interested in taking back the amount and intend to file a suit for possession by way of specific performance of agreement to sell as there is no default on his part and he has acted upon terms and conditions of the agreement to sell by depositing the enhanced amount of compensation as well as getting the conveyance deed executed in favour of the petitioner, therefore, he is not ready to accept the offer made by the petitioner to return the amount along with interest.

After hearing learned counsel for the parties and considering the aforesaid facts and also in view of previous orders passed by this Court, this Court finds that the petitioner is entitled for anticipatory bail, subject to the following conditions: -

- (a) The petitioner will deposit the entire amount including the amount paid by Usha Punia i.e. Rs.63,77,580/- plus stamp duty of Rs.5,69,706/- with trial Court/Illaq Magistrate.
- (b) In case, the petitioner deposit the enhanced amount of Rs.38.00 lacs with Estate Officer, HUDA, Hisar, same will be refunded to Usha Punia without prejudice to her right of filing of civil suit.
- (c) The petitioner will deposit Rs.63,77,580/- plus Rs.5,69,706/-, total

Rs.69,47,286/-, with the Illaqa Magistrate within a period of 03 months from today i.e. on or before 19.07.2022, which will be kept in an FDR subject to final outcome of the trial. This will be subject to the condition that without prejudice to right of the petitioner to lead his defence evidence as well as right of the complainant/s to lead the prosecution evidence.

- (d) In case the petitioner opt to deposit Rs.38.00 lacs with the Estate Officer, HUDA, Hisar within a period of three months from today, amount so deposited by Usha Punia will be returned back to her, again without prejudice to the civil right of Amit Kukreja or Usha Punia, to be decided in the suit praying for a decree of possession by way of specific performance of agreement to sell dated 30.01.2020 and 31.07.2020, if so filed.

With the aforesaid conditions, this petition is allowed and the interim bail granted to the petitioner vide order dated 18.02.2022 is made absolute subject to the conditions envisaged under Section 438 (2) Cr.P.C.

[ARVIND SINGH SANGWAN]
JUDGE

19.05.2022
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No