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

CRM-M-10156-2022

Date of decision : 10.03.2022

Vivek Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.K. Handa, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 439(2) of Cr.P.C. read with Section 482 of Cr.P.C. for cancellation of anticipatory bail granted to respondent Nos.2 and 3 vide order dated 21.02.2022 passed by the Sessions Judge, Karnal.

Learned counsel for the petitioner has submitted that in the present case, one agreement to sell (Annexure P-1) dated 18.02.2021 was executed by respondent No.3 in favour of the present petitioner for total consideration of Rs.20,61,642/- and out of the said amount, an amount of

Rs.5 lacs was paid as earnest money and last date for registration of the said sale deed was 30.10.2021. He has further submitted that instead of executing the sale deed in favour of the present petitioner, the said respondent No.3 had executed three sale deeds in favour of third parties and thus, it is apparent that respondent No.3 in collusion with respondent No.2 had committed cheating with the present petitioner and had usurped Rs.5 lacs of the petitioner. On the basis of said arguments, learned counsel for the petitioner has submitted that the impugned order granting bail to the petitioner, deserves to be set aside.

Learned counsel for the petitioner has further submitted that in the impugned order, material which is not on record, has been considered by the Sessions Court. It is submitted that there is nothing on record to show that the petitioner is a partner of said Dharampal and Deepak Sharma.

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

FIR, in the present case, was registered on 28.01.2022. A perusal of the order dated 21.02.2022 (Annexure P-7) would show that respondent Nos.2 and 3 had filed the said anticipatory bail application, which came up for hearing before the Sessions Judge, Karnal on 17.02.2022. On the said date, the argument of learned counsel for respondent Nos.2 and 3 to the effect that a false case has been registered against them in order to pressurize them, was noticed. It was argued on behalf of respondent Nos.2 and 3 that the complainant/petitioner, Deepak

Sharma and one Dharampal Sharma were property dealers who had got the sale deeds/agreements to sell executed from respondent No.2-Rajbala in respect of land measuring 3 kanals 8.33 marlas in favour of persons who belonged to the complainant party. Reference has been made to the complaint made to SP Karnal on 24.12.2021 alongwith affidavit, in which, the allegations had been levelled against the present petitioner, Deepak Sharma and Dharampal Sharma as per which the said three persons were working jointly. Some documents were also referred to show the inter-connection between the said three persons. The submission to the effect that the present dispute is primarily a civil dispute and the law points in the relevant judgments were also noticed. Further, while passing the order dated 21.02.2022 granting bail to respondent Nos.2 and 3, the Sessions Judge, Karnal had also noticed that respondent Nos.2 and 3 had joined the investigation. Even the judgment of the Hon'ble Supreme Court in **State of Maharashtra Vs. Sayed Mohammed Masood and another** reported as **2010(1) RCR (Criminal) 177** was noticed and it was further observed in the impugned order that the question as to whether, the averment of respondent Nos.2 and 3 to the effect that they had already transferred the land through the sale deeds/agreements to sell in favour of persons brought by the complainant and his partners or, the version of prosecution to the effect that the persons in whose favour sale deeds/agreements to sell were executed were not the persons of the complainant is correct, would be considered during the course of trial. After considering the entire matter, the anticipatory bail was granted to

them.

This Court has considered the abovesaid order and is of the opinion that the said order is legal and deserves to be upheld. It is an admitted fact that the petitioner has not filed any suit for specific performance till date, although, it was always open to the petitioner to have filed a suit for specific performance in case, respondent No.3 had backed out from the agreement. The whole issue at hand, including the question as to whose version, as recorded in the abovesaid impugned order, is correct, would show that the present dispute has civil trappings. At any rate, the entire dispute is based on documentary evidence and thus, on the said aspect also, the custodial interrogation of respondent Nos.2 and 3 is not required. It is settled law that this Court is to interfere in the order granting bail to respondent Nos.2 and 3 only when overwhelming grounds are made to cancel the anticipatory bail. The Hon'ble Apex Court in **Mahant Chand Nath Yogi Vs. State of Haryana** reported as **2003(1) SCC 326**, has observed in Paragraph 17 as under:

“17. This Court in Subhendu Mishra v. Subrat Kumar Mishra and another (2000 SCC (Cri) 1508) following the principles stated in Dolat Ram and others v. State of Haryana, [(1995) 1 SCC 349] has reiterated that there is a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted. Normally, very cogent and overwhelming grounds or circumstances are required to cancel the bail already granted. In the present case, the High Court, it appears, did not bear the distinction in mind and cancelled the bail in a mechanical manner.”

This Court is of the opinion that there is no such overwhelming circumstance to set aside the impugned order granting bail to respondent Nos.2 and 3 and thus, the present petition is dismissed.

It is, however, clarified that the observations made in the present order is only for the purpose of deciding the present petition for cancellation of anticipatory bail and should not be construed as an expression of opinion on the merits of the main case/trial/ancillary proceedings which would be considered and decided independent of the observations made in the present case.

10.03.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No