IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-12548-2022
Date of Decision: 28.03.2022

Sanjay

....Petitioner(s)

Versus

State of Haryana and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Keshav Pratap Singh, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

Mr. V.K. Jindal, Senior Advocate assisted by
Mr. Gopal Soni, Advocate and
Ms. Anna Thakur, Advocate, for the complainant.

JASGURPREET SINGH PURI, J.(Oral)

The present petition been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No.119 dated 23.02.2022, under Sections 406, 420, 34 IPC, registered at Police Station Gharaunda, District Karnal.

The present FIR came to be lodged on the basis of orders passed by the learned Illaqa Magistrate under Section 156(3) of Cr.P.C.

As per the prosecution, the petitioner who is the owner of a property situated at Village Garhi Multan, Teshil Gharuanda, District Karnal had executed an agreement to sell vide Annexure P-1 dated 02.11.2018 with one Ishwar Singh and received an amount of Rs. 33,00,000/- as earnest money from him and the last date of execution of sale deed was mentioned as 04.12.2018. The aforesaid agreement to sell did not crystallize into sale deed and thereafter, the petitioner again executed another agreement to sell vide Annexure P-2 on 28.08.2020 with one Surender Singh Saroha and from him, he received an amount of Rs. 67,00,000/- as earnest money and the last date of execution of sale deed was mentioned as 27.11.2020. This agreement to sell also did not mature into registered sale deed. Thereafter, the petitioner again executed third agreement to sell vide Annexure P-9 on 02.04.2021 with complainant Jaswant Singh and received an amount of Rs. 70,00,000/- as earnest money. The last date of execution of sale deed was mentioned as 02.07.2021 but thereafter the same was extended to 02.10.2021 and another sum of Rs. 43,25,000/- was received by the petitioner from the aforesaid Jaswant Singh i.e. totaling Rs. 70,00,000/- + Rs. 43,25,000/- = Rs. 1,13,25,000/- and this agreement to sell also did not crystallize into registration of sale deed and, therefore, the present FIR has been lodged against the present petitioner.

Mr. Keshav Pratap Singh, learned counsel for the petitioner has submitted that so far as the aforesaid three agreements are concerned, the same are not in dispute and are correct. He further submitted that it is also correct that the petitioner has received an amount of Rs. 33,00,000/- qua the first agreement, Rs.67,00,000/- qua the second agreement and Rs.1,13,25,000/- qua the third agreement and totaling an amount of Rs. 2,13,25,000/- from three different proposed vendees. He has however submitted that the present subject matter of the case pertains to civil liability, if any and, therefore, the lodging of the FIR under Sections 420, 406 and 34 IPC was an abuse of the process of law. He further submitted that so far as the first agreement to sell is concerned, the last date for execution of the sale deed had expired and the proposed vendee did not get execution of the sale deed conducted and, therefore, the earnest money stood forfeited. So far as the second agreement to sell is concerned, although he received the earnest money of Rs.67,00,000/- but the proposed vendee did not come forward for execution of sale deed and, therefore, earnest money also stood forfeited and so far as the third agreement to sell is concerned, again the proposed vendee has not come forward for execution of sale deed and, therefore, earnest money also stood forfeited. He further submitted that in this way the petitioner is entitled for the grant of anticipatory bail. He further submitted that a compromise was offered to the complainant with regard to the disputed property as well as for an alternate land of his brother but of no avail.

Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has submitted that he has received the advance copy of the present petition and has perused the same and has also sought instructions from the concerned I.O. He further submitted the present case is not a case of one isolated agreement so as to give it a shape of civil nature and *ex facie* the element of cheating and deception was present at the time of inception level. He further submitted that it is a case where the petitioner has taken an amount of Rs. 33,00,000/-+ Rs. 67,00,000/-+ Rs.1,13,25,000/-= Rs.2,13,25,000/- from three different persons and has concealed the factum of earlier receiving of amount and agreement to sell while executing a subsequent agreement to sell. He further submitted that in this way the ingredients of Section 420 IPC are fulfilled since it was a case of cheating with an element of deception at the level of inception and, therefore, it cannot be said that it is a case of civil liability. He further submitted that the gravity of the offence involving three persons where more than Rs. 2

crores has been taken by the petitioner by concealing material facts from the subsequent proposed vendees and, therefore, the petitioner does not deserve the concession of anticipatory bail. He further submitted that in such like cases for the purpose of elicitation of truth and to know the *modus operandi* adopted by the petitioner, the custodial interrogation of the petitioner is required and there is also reasonable apprehension that in case the petitioner is granted bail, he may even repeat the offence considering the background of this case and may even abscond since he has already taken an amount of Rs. 2,13,25,000/-. He further submitted that so far as the petitioner executing an agreement to sell dated 28.08.2020 with Surender Singh Saroha whereby he has taken Rs. 67,00,000/- from him, another FIR has been lodged against the petitioner in FIR No.527 dated 27.08.2021, under Sections 406 and 420 IPC.

Mr. V.K. Jindal, learned Senior Advocate with Mr.Gopal Soni, Advocate has appeared on behalf of the complainant and has also filed the power of attorney of Mr. Akshay Kumar Jindal, Advocate. While opposing the grant of anticipatory bail Mr. V.K. Jindal, learned Senior Advocate has submitted that the petitioner has kept the complainant in dark and he did not disclose the factum of earlier two agreements by which he had taken Rs. 1 crore from different persons and has rather specifically stated in the agreement Annexure P-9 that he has not entered into any agreement to sell regarding said land in favour of any one in any manner whatsoever. The relevant portion of the agreement to sell which was entered into by the petitioner and the complainant is reproduced as under:-

> *"I, Sanjay Singh (Adhaar No.770752419037) son of Madan Singh, is resident of Village Garhi Multan, Tehsil Gharaunda,*

> *District Karnal. Whereas I am owner in possession of land bearing Khewat No.58, Killa No.13, 14, 15, situated in revenue estate of Village Garhi Multan, Teshil Gharaunda, District Karnal. The said land is not subject matter of any litigation before any Court of law, nor any loan is borrowed from any bank/financial institution against said land, nor I have earlier entered into any agreement to sell regarding said land in favour of anyone in any manner whatsoever.*

The learned Senior Counsel further submitted that from the aforesaid contents of the agreement to sell it is clear that the petitioner has deliberately and actively concealed the factum of earlier two agreements to sell whereby he received Rs. 1 crore from two persons and, therefore, on the face of it, it is clear that the element of cheating and deception was at the time of the execution of the present agreement to sell (Annexure P-9) which is at the inception level and the petitioner had taken Rs. 70 Lakhs from him and thereafter the last date was even extended for another period and further a sum of Rs. 43,25,000/- and totaling Rs. 1,13,25,000/- has been taken from the complainant by committing a fraud upon the complainant and has therefore opposed the grant of anticipatory bail to the petitioner. The learned Senior Counsel further submitted that even otherwise also the property which was the subject matter of all the three agreements has been given on lease by the petitioner and he is not even in possession of the same. He referred to Annexure P-2 which is the second agreement to sell whereby he has stated that the said land was free from all encumbrances and lien and is not earlier sold or mortgaged in favour of anyone. However, the said land was already given on lease to a third party. He further submitted that so far as the agreement to sell (Annexure P-9) which was entered into with him is concerned, it was also mentioned in the agreement to sell Annexure P-9 as reproduced above that the petitioner was in possession of the land whereas he was not in possession of the land and is given on lease to one Parteek Gupta and, therefore, it was a fraud at the inception level.

I have heard the learned counsel for the parties.

The dates and the facts of the present case have not been disputed by either of the learned counsel for the parties. It is an admitted position that the petitioner executed three agreements to sell in succession and has taken Rs. 2,13,25,000/- from three persons in succession. Neither the second agreement to sell nor the third agreement to sell discloses any of the earlier amount of money taken by the petitioner or the factum of agreement to sell. Rather in the third agreement to sell which is subject matter of the present FIR the petitioner has stated specifically that earlier he has not entered into any agreement to sell regarding the said land in favour of anyone in any manner whatsoever. It has even been stated in the agreement to sell (Annexure P-9) that the petitioner was in possession of the land whereas as per learned Senior Counsel for the complainant the same was given on lease to another person namely, Parteek Gupta. The receipt of Rs. 2,13,25,000/- by the petitioner from three persons in succession is not in dispute. So far as the second and third agreement to sell are concerned, the remedy of the subsequent vendees pertaining to filing a suit for specific performance or for any other remedy, the period of three years has not expired, although as of now as per the learned counsel for the parties none of the parties have filed any suit for specific performance. However, the petitioner has filed one suit for mandatory injunction against the present complainant which is pending.

The law with regard to lodging of FIR under Sections 420 and 406 IPC based upon contractual matters is no longer *res integra*. A financial dispute between the parties based upon breach of contract is essentially of a civil nature and the same should not be given any criminal flavour. However, it does not mean that the provisions of Section 420 or 406 IPC cannot be invoked at all. There can be no straight jacket formula for the same. The subject matter of each and every case depends upon the facts and circumstances. In the present case the petitioner undisputedly has taken earnest money from the first proposed vendee and taken an amount of Rs. 33,00,000/- as earnest money and in pursuance of the second agreement to sell he has taken Rs. 67,00,000/- and in pursuance of the third agreement to sell, he has taken Rs. 1,13,25,000/-, totaling Rs. 2,13,25,000/-. In the subsequent agreements i.e. second and third agreement he has not disclosed with regard to the earlier agreement to sell and rather in the third agreement to sell he has specifically stated that he has not entered with any agreement to sell regarding said land in favour of anyone in any manner whatsoever. The argument raised by the learned counsel for the petitioner that with regard to earlier two agreements the target date had already expired and the earnest money stood forfeited would not be sustainable in view of the fact that in the third agreement he has specifically stated that there was no earlier agreement to sell and he is in possession of the property. No justifiable explanation has come forth from the petitioner as to why at the inception level i.e. when the agreement to sell was executed, he has concealed the earlier agreement and amount taken. Therefore, the arguments raised by the learned Deputy Advocate General, Haryana that even if the case pertains to financial dispute between the parties but the elements sine qua non under Section 420 IPC are fulfilled because the element of deception at the time of execution of agreement to sell and taking an earnest money was writ large has some force. Furthermore, the gravity and the magnitude of the present case would disentitle the petitioner for grant of anticipatory bail.

Consequently, finding no merit in the present petition, the same is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

28.03.2022 **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

Whether speaking : Yes/No
Whether reportable : Yes/No