IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202 **CRM-M-16812-2022**

Date of Decision : **August 17, 2022**

VIPUL GARG

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

Mr. P.S.Hundal, Senior Advocate with
Mr. Vikramjeet Singh, Advocate
for respondent No.2.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.258 dated 7.9.2021 under Sections 420/467/468/471/506/120-B IPC, registered at Police Station Sadar Bahadurgarh, District Jhajjar, Haryana.

It has been submitted by the learned counsel for the petitioner that vide order dated 26.4.2022 the arrest of the petitioner was stayed and thereafter the interim order was also directed to be continued. He submitted that thereafter the petitioner has already joined the investigation and has fully cooperated with the investigation process and has, therefore, prayed that the petitioner may be granted anticipatory bail.

Learned counsel further submitted that it is a case where the allegation against the petitioner and the other co-accused is that the land belonging to the complainant was sold by the petitioner in the name of another firm, namely, Amit Land Consolidation Company which also belonged to the petitioner and this land was sold in a fraudulent manner and the consideration amount was never paid to anybody and, therefore, as per the prosecution a fraud was committed upon the complainant. Learned counsel has further submitted that the petitioner is a colonizer and is dealing with a real estate and in furtherance of his business he was to take the land and carve out the plots out of the same and in the present case as well he had made an agreement with the complainant for purchasing of the land. He further referred to Collaboration and Development Agreement dated 6.2.2018 Annexure P-9 to show that the complainant himself had entered into the aforesaid Collaboration and Development Agreement with Real Niwas Properties Pvt. Ltd. of which the petitioner was the employee and thereafter vide Annexure P-8 dated 6.2.2018 the complainant executed Special Power of Attorney in favour of the company belonging to the petitioner and referred to Clause 8 of the Special Power of Attorney wherein power to lease, sell, mortgage, partition, exchange or otherwise deal with developed plots and/or built-up spaces in the proposed residential colony was mentioned. However, as per the Clause 25 of the aforesaid Special Power of Attorney, the said power of attorney was meant for sale-deed of the land except the plots carved out on this land under the provisions of license issued by Government. He further submitted that for the purpose of carving out of the plots the process was initiated with the Government which is still pending. He submitted that thereafter in pursuance of the aforesaid

Special Power of Attorney the sale-deed was executed with respect to the land of the complainant on 25.10.2018. He further submitted that in lieu of the consideration amount, an amount of Rs. 2 lacs was transferred by way of RTGS in the account of the complainant and approximately an amount of Rs.20 lacs was paid by the petitioner to the Bank with whom the property was mortgaged under the Kisan Credit Loan Scheme and in this way the consideration amount has been paid to the complainant. He further submitted that the adequacy of the consideration amount or the fact that some of the amount has not been paid is only a civil dispute and the same can be settled before the learned Civil Courts but the same has been given a criminal flavour by the complainant. He submitted that a civil suit for declaration and for consequential relief of permanent injunction was also filed by the complainant vide Annexure P-7 against the petitioner and some of the other defendants with regard to the same land which is still pending and this suit was filed on 17.2.2020 prior to the lodging of the present FIR.

Learned counsel further argued that a bare perusal of the FIR would show that earlier also in the year 2017 there was a move for the sale of the property by the complainant with the company of the petitioner but the same failed because the cheques were dishonoured and thereafter now the present allegations are pertaining to the year 2021 after a period of 4 years and even in the FIR it has been stated that the complainant got it checked up from the petitioner that no fraud will be committed and in this way a perusal of the FIR would show that the same is a concocted story since as per the FIR itself the complainant was well aware with regard to the property regarding which the deal has been failed in the year 2017. He further submitted that be that as it may, the petitioner has already joined the investigation and he undertakes to fully cooperate with the investigation process and, therefore, he may be granted anticipatory bail. He submitted that the petitioner is involved in about 8 cases of similar nature but the same also pertains to dispute with regard to piece of land regarding which compromise has also been effected in most of the cases and even quashing petitions have been filed before this Court in which notice of motion has been issued.

On the other hand, the learned State counsel has submitted that it is correct that after the arrest of the petitioner was stayed by this Court, the petitioner has joined the investigation. However, he has opposed the grant of anticipatory bail to the petitioner on the ground that the petitioner has not cooperated with the investigation process because no money has been recovered from the petitioner and rather he has admitted before the police that he has to give back an amount of Rs.44 lacs to the complainant. The learned State counsel has also submitted that the petitioner is involved in as many as 8 cases but he has denied any knowledge with regard to any compromise between the parties.

Mr. Hundal, learned Senior Counsel appearing for complainant has also opposed the grant of anticipatory bail to the petitioner. He has submitted that it is a case where the petitioner has committed a fraud not only upon the complainant but upon a large number of people since he is a real estate developer and colonizer and registered sale-deed was executed by him in a fraudulent manner though he was not even authorized to do so and the documents pertaining to Special Power of Attorney and the Collaboration were fabricated documents and, therefore, he does not deserve the concession of anticipatory bail.

However, Mr. Sanghi, learned counsel for the petitioner while replying to the arguments raised by the learned Senior Counsel for respondent No.2 submitted that the aforesaid two documents i.e. Special Power of Attorney and the Collaboration agreement are registered documents before the learned Sub Registrar and, therefore, it cannot be presumed that the same are fabricated documents and even otherwise also it is a matter of evidence which can be taken at the time of trial.

I have heard the learned counsels for the parties.

The arrest of the petitioner was stayed by this Court on 26.4.2022 and thereafter as per the learned State counsel the petitioner has already joined the investigation. However, an objection raised by the learned State counsel as well as by the learned Sr. Counsel for respondent No.2 that it is a case where a fraud has been committed by the petitioner by getting the property belonging to the complainant transferred in the name of firm, namely, Amit Land Consolidation Company which belonged to the petitioner himself and a camouflage has been committed by them. However, the learned counsel for the petitioner has relied upon two documents i.e. Special Power of Attorney and Collaboration and Development Agreement which according to the learned counsels for the parties were registered documents but the authenticity of the same has been denied by learned Senior Counsel for respondent No.2. So far as the objection raised by the learned State counsel that the recovery of money is still to be made from the petitioner, the same is not sustainable in view of the fact that the police is not expected to become a recovery agent once the petitioner has already joined the investigation. So far as the other argument raised by the learned Senior Counsel for respondent No.2 that a fraud has been committed is concerned, the same is also a matter of evidence which can be adduced at the time of trial. So far as the other argument raised by the learned Senior Counsel for respondent No.2 and the learned State counsel that the petitioner is involved in 8 more cases is concerned, it has been stated by the learned counsel for the petitioner that already a compromise has been effected between the parties and regarding which quashing petitions have been filed in which notice of motion has been issued. Be that as it may, as per the learned counsels for the parties, the petitioner has already joined the investigation and the matter is based upon documents. While considering the prayer for the grant of anticipatory bail, the Court always has to strike a balance between the liberty of an individual on the one hand and on the other hand as to whether there are any chances of tampering with any evidence or the accused fleeing from justice or any such strong reason. The State in the present case has already filed an affidavit and a perusal of the same would show that there is nothing to suggest that in case the petitioner is released on bail then he may influence any witness or may tamper with any evidence or may flee from justice. The only objection taken in para No.13 of the affidavit is that the custodial interrogation of the petitioner is required because the petitioner has cheated the complainant and grabbed the sale consideration amount.

Therefore, in view of the aforesaid facts and circumstances, this Court is of the view that the petitioner is entitled for the grant of anticipatory bail.

Consequently, the present petition is allowed. The petitioner shall continue to join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C. In the event of his arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

August 17, 2022
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No