

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

201

CRM-M-17486-2022 (O&M)
Date of decision : 11.11.2022

Manish Kumar Garg and another Petitioners

V/S

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Shiv Kumar Sharma, Advocate for
Mr. H.S. Sammi, Advocate for the petitioner.

Mr. Amish Sharma, Asstt. A.G., Punjab
for the respondent-State.

None for proposed respondents No.2 and 3.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioners have filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.34 dated 31.03.2022 registered under Sections 406, 420, and 120-B of the Indian Penal Code, 1860 at Police Station Dhakoli, District SAS Nagar (Mohali).

The above-said FIR was registered on the application moved by complainant-Narinder Khillan alleging that the petitioners cheated him for huge amount of Rs.32,00,000/- by entering into an agreement for sale of their house without disclosing the fact that they have obtained loan from ICICI bank by mortgaging the said house. Neither, the petitioners have executed the sale deed in his favour nor returned the amount and further executed another agreement with some other person.

Learned counsel for petitioners submit that the petitioners have been falsely implicated in the present case. The present FIR is nothing but just a counter-blast of a compliant filed by petitioner No.1 under Section 156(3) of the Cr.P.C. against the complainant in the Court of Judicial Magistrate First Class, Derabassi. A civil suit for permanent injunction and mandatory injunction is also pending between the parties. Nothing is to be recovered from the petitioners and their custodial interrogations are not required. The petitioners are ready and willing to join the investigation.

On the other hand learned State counsel has opposed the present petition in terms of reply dated 16.05.2022 filed by the State which is already taken on record.

I have heard learned counsel for the parties and perused the record.

As per reply filed by the State, a detailed inquiry was conducted by the Deputy Superintendent of Police, EO & Cyber Crime, District SAS Nagar, Mohali and it has been found that the petitioners entered into an agreement to sell of the house with the complainant- Narinder Khilan and Anil Bhalla and also received full and final payment of Rs.32,00,000/- from them in the presence of witnesses. The petitioners have already mortgaged the house in question with the ICICI Bank, Patiala and obtained loan of Rs.22,00,000/-. The petitioners were not handing over the possession of the house in question to the complainant on one pretext or the other and were further delaying by saying that they are not able to find any rented accommodation. Later on, the petitioners made allegations that they

have paid amount of Rs.32,00,000/- to Narinder Khilan and Anil Bhalla as security for sending petitioner No.1-Manish Kumar aboard.

During inquiry, it was further found that the petitioners as per planned conspiracy had defrauded the complainants of Rs.32,00,000/- by entering into an agreement to sell. Custodial interrogations of the petitioners are required for thorough investigation of the case and for recovery of amount of Rs.32,00,000/-.

Needless to say, such type of cheating is rampant in our society and is often adopted by fraudsters, property grabbers and unscrupulous persons by usurping hard earned money of innocent people. This has become a cakewalk to amass wealth illegally overnight which needs to be curbed to save the innocent people with an iron hand.

It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in **State Vs. Anil Sharma : (1997) 7 SCC 187** held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of

disinterring offences would not conduct themselves as offenders.”

Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case, point towards the complicity of the petitioner and thus custodial interrogation of the petitioner is necessary and would not amount to the violation of petitioner's right under Article 21 of the Constitution.

Keeping in view the above facts as well as nature of the offence, the petitioners do not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

Misc. Application(s) pending, if any, shall stand disposed of accordingly.

11.11.2022

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No