IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-21338-2022

Date of Decision:-18.05.2022

Rakesh Khanna.

......Petitioner.

Vs.

State of Haryana.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Umesh Kumar Kanwar, Advocate for the Petitioner.

***

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Section 438 Cr.PC is for grant of anticipatory bail in case FIR No.0102 dated 17.02.2022 under Sections 120-B, 406, 420 IPC registered at Police Station Suraj Kund, District Faridabad, Haryana.

The brief facts of the case are that the FIR came to be registered at the instance of Tejpal with the allegations that he wanted to purchase a residential house for himself and his family members. One property dealer Vipin Aggarwal showed him many properties and at the last the said Vikram Aggarwal and Anand Talwar property dealer showed him H.No.1165, Sector 46, Faridabad which was owned by petitioner-Rakesh Khanna and his brother Rajesh Khanna. After finalizing the deal the complainant sought clarification from the accused as to whether there were any encumbrances on the property. The complainant also verified this fact from HUDA and in the record this property is in the name of petitioner and his co-accused and there is no charge shown in the official record of HUDA. The complainant asked the accused to show the original documents to which the accused replied that the original documents were lying in the bank and they showed the photocopy in the office of Anand Talwar in the presence of Vipin

Aggarwal. However, they assured the complainant that all the original documents would be handed over to the complainant at the time of agreement to sell and that the property was free from all encumbrances and the complainant could avail a loan to purchase the same. The deal was thereafter finalised for a sum of Rs.1,93,00,000/-. The complainant paid an amount of Rs.25 lacs and agreement to sell was executed in favour of Urmila wife of the complainant and his daughter-in-law. Thereafter the complainant got to know that the accused did not have the original documents with them because they have handed over all the original documents to IDBI Bank at the time of taking a loan. In fact the said documents got burnt in the bank on 11.12.2017, a fact the accused were aware of and, therefore, the complainant was trapped as the petitioner and his co-accused had the intention to commit cheating with the complainant at the very outset when they had taken token money from the complainant without disclosing the fact that no loan could be issued against the property as the property was mortgaged.

The Counsel for the petitioner contends that it is primarily a civil dispute and the petitioner is ready and willing to execute the sale deed. He further states that the complainant knew about the property being mortgaged and did not have the funds to purchase the same and therefore, this FIR has been registered.

I have heard learned Counsel for the Petitioner.

His contention that the petitioner is ready and willing to execute the sale deed is fallacious. In fact during investigation it has been found that the accused Rakesh Khanna and Rajesh Khanna had agreed to sell the house in question to the complainant for a sum of Rs.1,93,00,000/- out of which the complainant had paid a sum of Rs.49 lacs. The sale deed was to be executed on 23.04.2021 but the accused made an alteration in the agreement and extended the date to 31.05.2021. Further the accused have also obtained a loan of Rs.40 lacs from IDBI Bank, Delhi and this fact has been concealed at the time of execution of the agreement. A perusal of para 7 of the agreement (Annexure P-1) would show that the property is shown to be free from all sorts of encumbrances, sale, gift, mortgage etc., which is factually incorrect. Further the question of handing over the original papers to the complainant would not arise because firstly the papers have been destroyed and secondly the property is mortgaged. The complainant was to take a loan to purchase the house which was not possible because it was mortgaged.

In view of the foregoing discussion, the petitioner and his co-accused have quite apparently committed the offence of cheating with the complainant by entering into an agreement to sell with the complainant, receiving a sum of Rs.49 Lacs by concealing the fact that the property was mortgaged with the bank.

In view of the seriousness of the allegations, the custodial interrogation of the petitioner is required to unearth the entire conspiracy. Accordingly, the present petition is dismissed.

(JASJIT SINGH BEDI)
JUDGE

May 18, 2022
Vinay

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***