

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

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CRM-M-28540-2021

Date of Decision : January 25, 2022

BIRWATI

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

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CRM-M-43488-2021

TUHI RAM

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Through Video Conferencing

Present : Mr. Amit Choudhary, Advocate
for the petitioner in both the petitions.

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

JASGURPREET SINGH PURI. J. (Oral)

Both the petitions are being taken up together as prayer in both the petitions is for anticipatory bail in case FIR No.307 dated 12.5.2021 under Sections 406, 420, 120-B IPC, registered at Police Station Camp, Palwal, District Palwal and both the petitions arise out of same FIR.

Mr. Amit Chaudhary, Advocate in both the petitions for the petitioners has submitted that an FIR was lodged vide Annexure P-1 by one Anil Kumar son of Sh. Naresh Kumar under Sections 406, 420 and

120-B IPC against both the petitioners and one other co-accused, namely, Rahul. Petitioner, namely, Birwati is the wife of other petitioner Tuhi Ram. As per the allegations made in the FIR, petitioner-Tuhi Ram told him that in Kailash Nagar, Palwal there is a residential plot measuring 200 square yards and the registry of the same is in the name of his wife namely Birwari and asked the complainant that they want to sell this house. Thereafter the petitioner Tuhi Ram has finalized the agreement to sell the house for an amount of Rs.25 lacs and thereafter an agreement was finalized on behalf of the petitioner-Tuhi Ram and on behalf of his wife and agreement to sell was made in this regard for a sale consideration of Rs.25 lacs. An amount of Rs.22 lacs was also taken as a token by the aforesaid two persons and Rs.3 lacs was decided to be given at the time of registry and the date of registry was fixed as 18.11.2016. Thereafter, they resiled from the agreement and, therefore, the petitioners have committed an offence. Thereafter Rs. 3 lacs was also given as full and final settlement but they did not get the sale-deed registered.

The learned counsel for the petitioners has submitted that the present FIR has been lodged after a period of 5 years as the alleged agreement which is otherwise denied by the petitioners was executed on 19.9.2016 and the present FIR came to be lodged on 12.5.2021 and there is no justification for the delay. He further submitted that before lodging of the present FIR the complainant had even filed a suit for specific performance and for permanent injunction vide Annexure P-3 on 22.8.2019 regarding the aforesaid subject matter and the same is still pending. He submitted that on the face of it, the present dispute was at

the most of a civil nature which has been given a criminal flavour after a gap of 5 years. He submitted that the petitioners have denied the execution of agreement to sell. He further submitted that lodging of the present FIR was nothing but an abuse of the process of law in view of the fact that prior to the filing of present FIR after a gap of 5 years the complainant had already filed a suit for specific performance and the matter is sub-judice. He submitted that the petitioners were granted interim bail by this Court on 26.7.2021 in CRM-M-28540-2021 and on 14.10.2021 in CRM-M-43488-2021 and in pursuance thereof both the petitioners have joined the investigation and fully cooperated with the investigation process and, therefore, the orders granting interim bail to the petitioners may be confirmed.

On the other hand, Mr. Arya, learned Addl. Advocate General, Haryana has submitted that it is correct that in pursuance of the orders passed by this Court on 26.7.2021 and 14.10.2021 both the petitioners have joined the investigation but as per his instructions they had not cooperated with the investigation process. He submitted that both the petitioners have denied the execution of sale agreement but the copy of the agreement was sent to the FSL wherein it has been found that one of the thumb impression of petitioner Birwati were matching and, therefore, custodial investigation was required in the present case.

Mr. Rohit, Advocate for Mr. Kunal Dawar, Advocate also caused appearance on behalf of the complainant and has submitted that since the petitioners have committed a fraud upon the complainant and cheated him for an amount of Rs.25 lacs, they should not be granted the

concession of anticipatory bail.

I have heard the learned counsels for the parties.

It is an admitted position that in pursuance of the orders passed by this Court on 26.7.2021 and 14.10.2021 granting interim bail, the petitioners have joined the investigation. However, the stand taken by the learned State counsel that the petitioners have not cooperated with the investigation process as they have not returned the amount of money to the complainant despite the fact that one of the thumb impressions of one of the petitioners were found to be matching by the FSL needs to be considered.

A perusal of the pleadings as well as on hearing learned counsel for the parties, it can be seen that the present FIR has been lodged after a delay of 5 years and no justification has come forth from the learned State counsel as well as from the learned counsel for the complainant with regard to the same. A civil suit was filed seeking specific performance by the complainant in the year 2019 which was prior to the filing of the present FIR and the petitioners have denied the execution of agreement to sell. The said suit is stated to be pending before the learned Civil Court. So far as the objection taken by the learned State counsel that co-operation of the petitioners was required for the purpose of returning of Rs.25 lacs is concerned, the same is absolutely unsustainable in view of the fact that the police cannot become a recovery agent particularly in view of the fact that one civil suit on the subject matter of agreement to sell is sub-judice before the Civil Court and, therefore, the plea raised by the learned State counsel is not

acceptable.

In view of the aforesaid facts and circumstances of the present case, I deem it fit and proper to allow both the petitions.

Consequently, both the petitions are allowed and the orders dated 26.7.2021 and 14.10.2021 are, hereby, made absolute. Both the petitioners shall continue to join the investigation and in the event of their arrest, they be released on interim bail subject to their furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall abide by the conditions as provided under Section 438(2) Cr.P.C.

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

(JASGURPREET SINGH PURI)
JUDGE

January 25, 2022
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No