

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

101+209

**CRM-M-36561-2021 (O&M)
Date of Decision: 30.08.2022**

Rajender Kumar Sharma

. . . Petitioner

Versus

State of Punjab

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Varun Goyal, Advocate,
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

Mr. Tribhawan Singla, Advocate,
for the complainant.

VIKAS BAHL, J. (Oral)

CRM-1489-2022

This is an application under Section 482 Cr.P.C. for placing on record the relevant documents/legislation of the Himachal Pradesh Tenancy and Land Reform Act, 1972 (Annexure P-18) in lieu of order dated 06.12.2021 passed by this Court.

Application is allowed and the documents, Annexure P-18 annexed with the application is taken on record.

CRM-M-36561-2021

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.33 dated 22.07.2021 under Sections 406 and 420 of the Indian Penal Code, 1860 registered at Police Station NRI Wing, District SAS Nagar, Mohali.

Learned Senior Counsel for the petitioner has contended that vide order dated 06.09.2021, a Coordinate Bench of this Court was pleased to issue notice of motion in the case and also had passed an interim order in favour of the petitioner to the effect that the in the event of arrest of the petitioner by the Arresting Officer, he will be released on interim bail subject to the petitioner joining the investigation. It is further submitted that the said interim order was continued from 06.09.2021 till date and the petitioner has never misused the said concession and has joined the said investigation. It is further submitted that the present dispute has civil trappings and the entire case is based on documentary evidence and thus, the custodial interrogation of the petitioner is not required.

Briefly, it has been stated that in the present case, a memorandum of understanding dated 09.07.2008 had been entered into, which was specifically superseded by the two subsequent agreements. The Ist agreement was an agreement to sell dated 07.10.2009 (Annexure P-7), as per which the present petitioner had to sell a portion of the land

to the complainant on which, a part of the hotel was constructed and the 2nd agreement was an agreement for exchange dated 07.10.2009 (Annexure P-8), to be effected by the complainant in favour of the petitioner. It is submitted that the complainant had breached the said two agreements since he was neither ready with the balance sale consideration nor had given the land in exchange and in fact, had encroached upon the extended land. Thereafter, a legal notice dated 09.08.2018 was served by the petitioner upon the complainant and the aforesaid agreements were cancelled. It is further submitted that the petitioner had filed a suit for possession on 10.12.2021 with respect to the land which was in illegal possession of the complainant and as a counter claim to the same, the present complainant had filed a cross case with respect to the specific performance of the MOU dated 09.07.2008 and the said cases are pending before the Hon'ble High Court of Himachal Pradesh and the question as to who breached the agreement, would be decided in the said civil Court proceedings.

Learned State counsel has submitted that the petitioner has joined the investigation and is not required for any further custodial interrogation.

Learned counsel for the complainant has opposed the present petition and has submitted that it is the present petitioner who has breached the aforesaid agreements and has thus, usurped an amount of Rs.26,00,000/-.

This Court has heard learned counsel for the parties and has perused the paper-book.

A Coordinate Bench of this Court vide order dated 06.09.2021 had issued notice of motion in the present case and had also granted interim protection to the petitioner. The said interim order has been continued till date. It is not the case of the prosecution that the petitioner had misused the said concession. The petitioner is stated to have joined the investigation and he is not required for further investigation. The questions that whether MOU dated 09.07.2008 was superseded by the two agreements dated 07.10.2009 or not and whether it was the petitioner or the complainant who had breached the agreement, would be finally adjudicated in the civil suit proceedings which have been filed by the petitioner seeking possession in which, a cross case has been filed by the complainant for specific performance. The entire dispute is based upon documentary evidence and thus, the custodial interrogation of the petitioner is not required.

Keeping in view the abovesaid facts and circumstances moreso, the facts which have been noticed in abovesaid orders dated 06.09.2021 and also the fact that the petitioner has joined the investigation and is not required for further custodial interrogation, the present petition is allowed and the interim order dated 06.09.2021 is ordered to be made absolute.

However, nothing stated above shall be construed as an

expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

30.08.2022
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No