

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

203

CRM-M-35479-2022
Date of decision : 17.11.2022

Vivek Kumar

Petitioner

V/S

State of Haryana and another

Respondents

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Mazlish Khan, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. A.G., Haryana
for respondent No.1-State.

Mr. Rao Ajender Singh, Advocate
for respondent No.2.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of anticipatory bail in case FIR No.215 dated 02.04.2019 registered under Sections 419, 420, 467 and 468 of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station Model Town Rewari District Rewari.

The above-said FIR was registered on the complaint made by respondent No.2-Sushila Devi alleging that on 30.05.2016 the petitioner entered into an agreement to sell his plot measuring 215 square yards with her husband and received whole amount of agreement to sell i.e. 24,94,000/-. Co-accused Chanderkant was mediator in that agreement to sell. Later on, the petitioner neither got registered the sale deed nor returned the amount. The petitioner make a

false and fabricated agreement in her favour with making conspiracy with Chanderkant with intent to cheat her. Now, apprehending his arrest, the petitioner has filed the present petition for grant of anticipatory bail.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. The petitioner has not committed any crime. The dispute is purely of civil nature which has been given a criminal colour. There is inordinate delay of 03 years in lodging of the FIR. No offence of fraud or forgery is made out as the petitioner has already disclosed the fact in agreement to sell that he is not the owner of the property in dispute. Co-accused Chanderkant has already been granted anticipatory bail by learned Sessions Judge, Rewari vide order dated 26.12.2019. The whole case is based upon the documentary evidence which is already in the possession of the police. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is already ready and willing to join investigation. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgments of Hon'ble Supreme Court passed in ***Criminal Appeal No.1392 of 2007 (Arising out of SLP (Criminal) No.3658 of 2004 titled as Inder Mogan Goswami and another Vs. State of Uttaranchal and others, decided on 09.10.2007*** and ***Birwati Vs. State (NCT of Delhi) and another Vs. 2015(6) RCR (Criminal) 85.***

Per contra, learned State counsel assisted by learned counsel for respondent No.2/complainant have opposed the present petition in terms of reply dated 23.08.2022 filed by the State which is

already taken on record. Learned counsel submitted that the petitioner had cheated the complainant by dishonestly enticing her to part with an amount of Rs.24,94,000/- on the pretext of selling his land by entering into an agreement to sell dated 30.05.2016 in favour of the complainant whereas he was not the actual owner of the said land which resulted into non-execution of the sale deed of the land. The petitioner has not even returned the amount of the complainant.

I have heard learned counsel for the parties and gone through the paper-book.

As per the reply filed by the State, during investigation co-accused Chanderkant disclosed that the petitioner entered into an agreement to sell with the complainant and received amount of Rs.24,94,000/- from the complainant. He (Chanderkant) was the mediator of the agreement to sell. The petitioner also took Rs.7,20,000/- from him. The petitioner was not traceable from last many years and he was also declared proclaimed offender in FIRs No.333 and 334 dated 03.08.2018. The petitioner having criminal antecedent and there is a chance of fleeing from justice. As per record available with the police the petitioner is also involved in 04 other criminal cases. The custodial interrogation of the petitioner is required for thorough investigation of the case and for recovery of amount of Rs.24,94,000/-.

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 over night 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.”

Keeping in view the overall facts and circumstances of the present case, the chain of events in commission of offences as depicted in the prosecution story and having regard to the seriousness of the allegations of enticing, fraud and cheating and *prima facie* involvement of the petitioner in the commission of offence and also the fact that the petitioner is a habitual offender and is also involved in 04 other

cases, I do not deem it a fit case for grant of concession of anticipatory bail to the petitioner.

In view of the above, the present petition being devoid of any merit is hereby dismissed.

Nothing said herein above shall tantamount to expression of opinion on the merits of the case.

17.11.2022

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No