

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

CRM-M-31200-2019 (O&M)

Reserved on : 11.10.2022

Pronounced on : 18.10.2022

Sanjay Sharma

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Chanchal K. Singla, Advocate
for the applicant/petitioner.

Mr. Himmat Singh, D.A.G., Haryana
for respondent No.1-State.

Mr. Arav Gupta, Advocate
for respondent No.2.

Mr. Gaurav Arora, Advocate
for respondent No.3.

ASHOK KUMAR VERMA, J.

1. 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.166 dated 25.06.2019 registered under Sections 406, 420, 506 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station Sarai Khawaja, District Faridabad, Haryana.

2. The above-said FIR was registered on the complaint made by respondent No.2-Girraj alleging that on 16.01.2019 the petitioner had entered into an agreement to sell of his land measuring 7 kanal 13 marla, situated at Mauja Ghughera, Tehsil and District Palwal, in his

favour for a sale consideration of Rs.43,90,000/- and on the basis of said agreement, the complainant had also entered into an agreement to sell of the said land in favour of one Jai Parkash s/o Girraj but when he asked the petitioner to get executed the sale deed of the said land in his favour, the petitioner demanded Rs.5,00,000/- as he was in need of the said amount for his personal use. In the month of February, 2019 the complainant had given Rs.5,00,000/- to the petitioner in presence of his nephew-Manoj and the petitioner assured him to get executed the sale deed of the land in the Nav Ratras. When the complainant along with his nephew-Manoj again asked the petitioner to get executed the sale deed of the land, the petitioner asked them to come at his house with an amount of Rs.17,00,000/-. On 05.04.2019 the complainant sent his nephew-Manoj along with his uncle-Om Parkash to the office of petitioner with an amount of Rs.17,00,000/- where they came to know that the office was in the name of Shiv Hari Singla. The petitioner had forcibly taken the amount of Rs.17,00,000/- from them. The petitioner had grabbed total amount of Rs.26,00,000/- from the complainant and also threatened to kill him as well as his family members. Now, apprehending his arrest, the petitioner has filed the present petition for grant of anticipatory bail.

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

4. Learned counsel for the petitioner has vehemently submitted that the petitioner has been falsely implicated in the present case at the behest of the complainant and business partners of the

petitioner, Shiv Hari Singla, who is the original owner of the land in question. Shiv Hari Singla executed an agreement to sell on 12.02.2018 in favour of the petitioner and has given rights to the petitioner that on the basis of said agreement the petitioner can deal with the property with the condition that after dealing, he (Shiv Hari Singla) himself will execute the sale deed of the land in favour of the purchaser, on the basis of which the petitioner entered into an agreement to sell with the complainant. On 16.01.2019, the complainant has paid an amount of Rs.4,00,000/- to the petitioner as an earnest money and after that the complainant has further entered into an agreement to sell with one Jai Parkash vide agreement to sell dated 31.01.2019 and has received an amount of Rs.5,00,000/- from him without knowledge, consent and permission of the petitioner. In order to throw the petitioner out of this deal, the complainant and Shiv Hari Singla connived together and registered the present FIR against the petitioner. In the FIR it is clearly mentioned that the complainant had paid amount of Rs.9,00,000/- to the petitioner and Rs.17,00,000/- to Abhishek son of Shiv Hari Singla. The land is situated at District Palwal and the agreement is also alleged to be executed at Palwal, however, the FIR in question has been registered at Faridabad.

Learned counsel for the petitioner has further submitted that the petitioner has also made complaints against the complainant- Girraj and Shiv Hari Singla to the Commissioner of Police, to the Economic Cell, Palwal and on CM Window, Palwal but no action was taken on his complaints. Learned counsel further contends that the

present is a case of civil nature and the complainant has wrongly given criminal colour to the civil dispute. In compliance with order dated 23.07.2019 passed by this Court, the petitioner has already joined investigation and nothing is to be recovered from the petitioner.

5. Per contra, learned State counsel assisted by learned counsel for the complainant and learned counsel for respondent No.3 have opposed the grant of anticipatory bail to the petitioner. Learned counsel submitted that the petitioner had cheated the complainant by dishonestly enticing him to part with an amount of Rs.26,00,000/- on the pretext of selling his land by entering into an agreement to sell dated 16.01.2019 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. The agreement to sell executed by the petitioner in favour of the complainant is just a blank document. Neither the date nor any signatures are mentioned in the said agreement. In the present case, the inquiry has been conducted by the Deputy Commissioner of Police, Central, Faridabad and during investigation the petitioner is found to be the real accused. Custodial interrogation of the petitioner is required for proper/thorough investigation of the case and also for effecting recovery of embezzled amount.

6. Having heard learned counsel for the parties and on carefully perusing the material available on record, I am of the view that that *prima facie*, from the very inception, the complainant appears to have been enticed by the petitioner to enter into an agreement to sell in

respect of land measuring 7 kanal 13 marla, situated at Mauja Ghughera, Tehsil and District Palwal for a total consideration of Rs.43,90,000/- (rupees forty three lakhs and ninety thousand only) and received an amount of Rs.5,00,000/- in the month of February, 2019 from the complainant, as earnest money and received total amount of Rs.26,00,000/- from the complainant but did not execute the sale deed in favour of the complainant, knowing very well that he is not the actual owner of the land in question. Respondent No.3-Shiv Hari Singla was the actual owner of the property who executed the agreement to sell in favour of the petitioner on 12.02.2018 which was later on cancelled by Shiv Hari Singla on 14.05.2018. Thereafter, the petitioner executed the agreement to sell in favour of the complainant on 16.01.2019. The petitioner was not the owner of the land in question at the time of executing above-said agreement to sell in favour of the complainant. Further, the agreement to sell (Annexure P-17) alleged to have been executed by the petitioner in favour of the complainant seems to be a suspicious document because it bears no date and many columns have been left as blank. In this manner, the petitioner with dishonest intention has tried to cheat and play fraud upon the complainant by taking huge amount by way of earnest money under the pretext of execution of sale deed in his favour. Even a CCTV footage was also taken into possession by the police in which the petitioner was found carrying a bag of currency notes containing Rs.17,00,000/-.

7. Moreover, in the present case enquiry has been conducted by the Deputy Commissioner of Police, Central, Faridabad. As per

report dated 26.09.2019 of the Deputy Commissioner of Police, Central, Faridabd, the agreement to sell executed by the petitioner in favour of the complainant is in the absence of Shiv Hari Singla, who was the real owner of the land in question. The said agreement has neither been registered anywhere nor certified. The agreement to sell his land executed by Shiv Hari Singla in the name of the petitioner was just an eye-wash which was later on found to be cancelled on 14.05.2018. In this view of the matter, it cannot be said to be a litigation purely of civil nature, rather needs to be taken seriously. It is well settled that filing of the civil suit by the complainant does not debar initiation of criminal proceedings where cognizable offence is made out. This view of mine finds support from the judgment of Hon'ble Supreme Court in **Parmod Kumar @ Parbodh Kumar vs. State of Punjab (SC)**, Law Find Doc. Id # 1979372.

8. It will not be out of place to notice here that during the pendency of this petition, the petitioner was granted interim anticipatory bail vide order dated 23.07.2019 passed by this Court. The mere enjoyment of interim benefit granted by this Court does not in any manner lessen the gravity of offence and allegations which need to be considered *prima facie* on merits. It may perhaps send a wrong message in case anticipatory bail is granted to the petitioner.

9. 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.

10. 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.”

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

12. In view of the above, the present petition being devoid of any merit is hereby dismissed and the order dated 23.07.2019 granting the petitioner interim anticipatory bail by this court stands vacated. Misc. Application(s) pending, if any, shall stand disposed of accordingly.

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

18.10.2022
Kothiyal

(ASHOK KUMAR VERMA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>