

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-42972-2022

Date of Decision: 11.10.2022

Meenu

... Petitioner

Versus

State of Haryana

... Respondent

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

Present: Mr.Shailender Singh Gill, Advocate for the petitioner

Mr.Himmat Singh, DAG, Haryana

Mr.R.N.Lohan, Advocate for the complainant

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The petitioner has approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail to him in FIR No.308 dated 9.8.2022 under Sections 406, 506 of the IPC (Offences under Sections 420, 120-B of the IPC added later on) registered at Police Station Kalayat, District Kaithal.

Learned counsel for the petitioner contends that present case has been lodged falsely against the petitioner. There is a land dispute between the petitioner and the complainant. The matter is purely of civil nature. It may at best be a case of specific performance. But a civil dispute is tried to be given the colour of criminal wrong doing. Learned counsel

further submits that nothing is to be recovered from the petitioner and thus no custodial interrogation is required.

On the contrary, learned counsel for the State assisted by learned counsel for the complainant, while referring to its status report by way of an affidavit, submits that the petitioner alongwith other co-accused played fraud upon the complainant and duped and cheated the complainant. The amount of earnest money of Rs.4,50,000/- is yet to be recovered. Earlier she has not cooperated with the investigation. During the course of investigation of the case, it has been found that the petitioner in collusion with co-accused Pardeep Kumar who is husband of the petitioner, committed criminal conspiracy by entering into agreement to sell of a house on which they had already taken a loan and as such Sections 420/120-B of the IPC were added. Learned counsel for the State also submits that the investigation is at initial stage and recovery is yet to be effected from the accused person and as such her custodial interrogation is necessary for finding out the *modus operandi* of commission of offence.

Having heard learned counsel for the parties, I am of the view that the petitioner has been specifically named in the FIR. There is specific role attributed to her that she alongwith the other co-accused has cheated and duped the complainant. There are very grave and serious allegations of fraud and misrepresentation as also concealment of material fact in the agreement to sell that the property which was already mortgaged with the Bank has been tried to be sold by the petitioner alongwith her husband. Such act and conduct is required to be viewed with all seriousness. The petitioner's custodial interrogation is necessary for complete and effective

investigation. In case the same is denied to the investigating agency, it would leave many gaps and loopholes, adversely affecting the investigation, which is uncalled for. In this view of the matter, it cannot be said to be a litigation purely of civil nature, rather needs to be taken seriously. Moreover, investigation is at initial stage.

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.”

In view of the discussion made above, the present petition being devoid of any merit is dismissed. Nothing said herein above shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

11.10.2022
MFK

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>