

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

CRM-M-42390-2022

Date of Decision: 15.9.2022

Sukhdev Kumar

... Petitioner

Versus

State of Punjab

... Respondents

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

Present: Mr.CL Verma, Advocate for the petitioner

Mr.GS Sandhu, DAG, Punjab

Mr.Akshay Chadha, Advocate for complainant

...

This is a petition under Section 438 of the Cr.P.C. for grant of anticipatory bail to him in FIR No.0214 dated 23.8.2022 under Section 420/506 of the IPC registered at Police Station Division No.5, Ludhiana.

Learned counsel for the petitioner, *inter alia*, contends that present case has been lodged falsely against the petitioner. Two transactions put forth by complainant are entirely different. Complainant sold the property measuring 50 square yards vide sale deed dated 30.11.2018 and as per the sale deed entire amount was received. The deal is independent and there is no dispute to the same. As far as counter deal, regarding plot measuring 33.33 square yard is concerned, the same was executed on 17.4.2017, but later on this agreement was cancelled in 2017 and the original agreement duly crossed over showing cutting is lying with the petitioner. The complainant received back full amount and deal for 33.33 square yards plot was cancelled. Nothing remains due towards the complainant. Learned counsel further submits that the present dispute can at best be said to be of civil nature. In support of his submissions, learned counsel relies on **Joseph Salvaraj A. v. State of Gujarat and thers, 2011 (7) SCC**

59, Devendra vs. State of Uttar Pradesh (SC), 2009 (8) JT 120, Madan Lal and another vs. State of Haryana and another, 2012 (3) RCR (Criminal) 643 etc. Learned counsel also 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 has opposed the grant of anticipatory bail to the petitioner since serious allegations have been made against him.

Learned counsel for the complainant appears and files Vakalatnama which is taken on record. *Per contra* learned counsel for the complainant submits that the petitioner is a habitual offender as one more FIR No.0170 dated 24.6.2022 under Section 420 IPC has been registered against the petitioner. This itself shows that the petitioner is bent upon to dupe the layman. He files photocopy of the FIR which is taken on record. Learned counsel further contends that the complainant is an illiterate and rustic person and is not aware of legal technicalities. He was cheated and befooled. Parties were having good relations and under that belief, sale deed was got executed for plot measuring 50 square yards, whereas for plot measuring 33.33 square yards, the petitioner backed out. Complainant was not even supplied original documents i.e. agreement to sell regarding plot measuring 33.33 square yards and only coloured photocopy was given, which was given to the police by the complainant. In case agreement would have been cancelled, an endorsement for cancellation would be there or documents could have been torn off. But document is lying intact. Without endorsement, just on the basis of cutting, it cannot be treated as cancelled. In any case agreement could have been cancelled in case amount would

have been returned back. In the present case, no amount was returned. Property in question is having big monetary value.

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

It is not disputed that the petitioner had transferred the property to Lal Singh, despite already having received full and final payment of agreement to sell with the complainant. The petitioner is not denying executing of such agreement and receipt of full and final payment and also transferring the property to Lal Singh. The petitioner has failed to show any receipt as how much money and on what date the same was returned to the complainant. If amount would have been returned, the petitioner would have taken receipt or made endorsement in the agreement itself. The judgments relied upon by the learned counsel for the petitioner are of no help to the petitioner, in view of the peculiar facts and circumstances of the present case.

Moreover, the petitioner has been specifically named in the FIR. There is specific role attributed to him. Investigation is still going on and, therefore, custodial interrogation of the petitioner is necessary for finding out the modus operandi of commission of offence and for recovery of the amount. 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.”

Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case, point towards the complicity of the petitioner and thus custodial interrogation of the petitioner is necessary and would not amount to the violation of petitioner's right under Article 21 of the Constitution.

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

(ASHOK KUMAR VERMA)
JUDGE

15.9.2022

MFK

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No