IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(201)

CRM-M-49113-2021
Date of decision: - 04.05.2022

Raj Kumar

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Aashna Gill, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

Mr. Vibhor Bansal, Advocate
for the complainant.

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VIKAS BAHL, J. (ORAL)

This is the first petition under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.237 dated 12.10.2021, under Sections 420 and 406 IPC, registered at Police Station City Rajpura, District Patiala.

Learned counsel for the petitioner has submitted that the petitioner runs a firm under the name and style of National/Sales Corporation, which is a super stockist of confectionery items and the complainant is a well known financier and because, the petitioner was in need of finances, he had approached the complainant for taking a loan. It is further submitted that the petitioner took a loan of Rs.5.50 lakhs from the complainant against which, as security, the complainant made the petitioner sign blank stamp papers and cheques with the assurance that they would be returned once the loan amount is repaid. It is also submitted that the complainant misused the said signatures obtained on blank stamp paper and cheques and prepared an agreement to sell dated 03.10.2019 with respect to the sale of the residential property of the petitioner for an amount of Rs.20 lakhs although, the loan taken by the petitioner was for an amount of Rs.5.50 lakhs. It is submitted that the petitioner never executed any agreement to sell with respect to a residential property and the said property is valued at Rs.58.20 lakhs and thus, the question of selling it for an amount of Rs.20 lakhs does not arise. It is further submitted that at any rate, the present dispute is a civil dispute, which is being given a criminal colour and that although, as per the said alleged agreement to sell the last date was 30.09.2020, but the present FIR has been registered on 12.10.2021 i.e., after a delay of one year from the alleged last date. It is argued that since the petitioner was not aware about the said agreement to sell, thus, he had taken other loans as he was in dire need of money. Learned counsel for the petitioner has submitted that the complainant has now filed a suit for specific performance, which is pending adjudication and all the pleas which have been raised, would be raised by the petitioner before the civil suit. Learned counsel for the petitioner has further submitted that the petitioner has joined the investigation and since the entire case is based on documentary evidence, thus, the custodial interrogation of the petitioner is not required. Learned counsel for the petitioner also submitted that the petitioner was even ready to pay an amount of Rs.6 lakhs without admitting the allegations in the FIR with the sole purpose of settling the dispute, but however, the same was rejected by the learned counsel for the petitioner on the ground that the complainant has already filed a civil suit seeking specific performance of the agreement to sell and the said fact was noticed in the order dated 15.12.2021.

Learned State counsel, on instructions from ASI Lakhwinder Singh, has submitted that the petitioner has joined the investigation and is not required for further investigation.

Learned counsel for the complainant has opposed the present petition for anticipatory bail and has submitted that the complainant had paid a total amount of Rs.21.50 lakhs on various dates and the petitioner kept dilly-dallying the matter and on 30.09.2020, the petitioner had got the date extended to 01.07.2021 and on 01.07.2021, the complainant learnt that the petitioner had taken loan from a Bank for an amount of Rs.38 lakhs against the same property on 02.01.2020. It is thus, submitted that the petitioner had usurped an amount of Rs.21.50 lakhs belonging to the complainant and his partner Surender Kumar. It is submitted that out of the said amount Rs.21.50 lakhs, an amount of Rs.8 lakhs was paid through bank transactions and the said amount of Rs.8 lakhs also includes Rs.2.50 lakhs, which was paid by Nidhi Singla, daughter-in-law of the complainant.

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

It is the case of the petitioner that he had taken a loan from the complainant, who was stated to be a financier and the complainant had taken signatures on blank papers for the purpose of security and the said documents have been misused for the purpose of preparing the alleged agreement to sell. It is further the case of the petitioner that the property in question is of a much higher value than that mentioned in the agreement to sell which has been executed and even in case, the case of the complainant to the effect that on 03.10.2019, an amount of Rs.10.20 lakhs was given, which is more than half the sale price and the execution of the sale deed was postponed for a period of more than 11 months as the date for the same was fixed as 30.09.2020, is taken on face value, then also, the same would indicate that the transaction was a loan transaction. It is the case of the petitioner that generally 10 percent of the total sale consideration is paid as earnest money & in case, such a huge amount is paid as earnest money, as in the present case, then the period for execution of sale deed is not postponed by 11 months. On the other hand, it is the case of the complainant that the present case is a case of agreement to sell and the complainant after having received the entire sale consideration, out of which, an amount of Rs.8 lakhs was paid through bank transactions, which included Rs.2.5 lakhs paid by the daughter-in-law of the complainant, the petitioner had taken a loan of the amount of Rs.38 lakhs on the same property. Section 406 & Section 420, the offences which have been alleged in the FIR, are mutually destructive. Admittedly, a civil suit for specific performance has been filed by the complainant and the same is pending. Respective pleas raised by both the parties would be considered and finally adjudicated in the said civil suit. The question as to whether there was any fraudulent inducement or the offences alleged to have been committed or not, would be finally considered at the time of trial. The entire dispute is based on documentary evidence and the present petitioner has already joined the investigation and as per the stand of the respondent-State, the petitioner is not required for further investigation.

Keeping in view the abovesaid facts and circumstances moreso, the facts which have been noticed in abovesaid order dated 29.03.2022 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 29.03.2022 is ordered to be made absolute.

However, nothing stated above shall be construed as a final 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

May 04, 2022
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	No