

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48647-2019 (O&M)
Reserved on: 08.08.2022
Pronounced on: 29.08.2022

Parveen Kumar ...Petitioner

Versus

State of U.T. Chandigarh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kartikeya Swaroop Mehta, Advocate for the petitioner.

Mr. Abhinav Gupta, Addl. P.P. U.T. Chandigarh.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate for respondent No.2.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
202	20.07.2019	North, Chandigarh	420 and 120-B IPC

1. The petitioner apprehending arrest in the FIR captioned above had come up before this Court under Section 438 Cr.P.C. seeking anticipatory bail.
2. Vide order dated 16-11-2019, the petitioner was granted interim protection, which is continuing till date.
3. Ld. Counsel for the petitioner contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. Ld. counsel representing the State opposes bail.
5. Ld. counsel appearing for the complainant also opposes the bail on the following counts:
 - The petitioner vide agreement to sell dated 15.07.2014. (Annexure P-2, Page no. 23), had clearly mentioned that the land is free from all encumbrances, claims, charges, attachments etc. etc. Clause 3 (Page 25) says that the land is not subject to any previous agreement. Target date as per Clause 6 is 24.04.2015. Clause 13 provides that in case of failure to complete the agreement, liability to pay double the amount etc. On 2.7.2015, he showed his inability and undertook

to return the earnest money of Rs. 65 Lacs failing which double the amount was to be paid.

- On the basis of these clauses the petitioner/accused obtained earnest money of Rs. 65 lacs.
- The complaint/FIR (Annexure P-1) clearly shows that there was a previous agreement dated 30.01.2014 (Page 18) and that petitioner accused had already entered into agreement to sell dated 30.1.2014 with Dinesh Dhawan and Nikit Dhawan and obtained Rs. 90 lacs for the same land. Date for sale deed was 28.07.2014.
- Two FIRs were registered by those purchasers/vendees of agreement to sell dated 30.1.2014, also against the same petitioner.
- The petitioner claims to have mutually settled with the earlier vendees vide Annexure P-4 on 08.09.2014 which is an incorrect statement when he obtained the bail order in FIR No. 114 dated 02.09.2015 which is later to that alleged settlement vide Annexure P-5. The petitioner has never approached the Hon'ble Court with clean hands.
- The notice of motion order dated 26.11.2019 passed by this Hon'ble Court clearly records the submission that petitioner is still ready and willing to execute the sale deed as per agreement. It was submitted that the land agreed to be sold is free from all encumbrances and sale deed can be executed. The said submission is repeated in the order dated 8.11.2021 when the complainant/respondent was arrayed as a party.
- Vide order dated 28.4.2022 this Hon'ble Court has noticed all the submissions including that he agreed to pay double the amount, he is ready to get the sale deed executed and that the petitioner /accused shall remain present at the concerned police station on 2.5.2022 at 9:00 AM and shall not leave the police station unless specific instructions are received by the concerned 1.O. from Ld. APP, UT. Chandigarh. The said order was not complied with as on the next date, i.e., 02.05.2022 the counsel made the statement that due to personal reasons the petitioner could not comply and rather tried to impress with respect to compromise.
- Vide order dated 21.07.2022 this Hon'ble Court directed the petitioner and his counsel to meet in the chamber of the complainant Advocate at 5:30 PM. The petitioner never came, no document showing the property to be free from all encumbrances with a clear title and ready for possession was submitted either on 28.07.2022 or even later to the Hon'ble Court by the counsel for petitioner and the petitioner himself did not appear which fact is noticed by this Hon'ble Court in its order dated 01.08.2022 as well.

- The petitioner/accused right from inception has committed fraud with complainant, who is a senior member of the Bar after obtaining earnest money of Rs. 65 lacs vide agreement to sell dated 15.07.2014 and has tried to overreach the Hon'ble Court on various occasions. Therefore, he does not deserve the concession of anticipatory bail.

REASONING:

6. Way back 16-11-2019, the petitioner was granted interim protection, which is continuing till date. After a gap of two years and nine months, there would be no justification to discontinue the interim protection, and the same is made absolute subject to the petitioner complying with the terms of the bail order and the following additional conditions.

7. Within fifteen days from today, the petitioners shall forward to the Investigator/SHO and the complainant/victim(s) the complete details of bank account numbers with addresses, fixed deposits, DEMAT account numbers, the current market value of jewelry, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand. ***If the petitioners fail to comply with this condition, then on this ground alone. In that case, the bail might be canceled, and the complainant may file any such application for the cancellation of bail, and State shall file the said application.***

8. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within fifteen days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules.

9. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal or otherwise objectionable behavior towards the victim and victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around the victim's home.

10. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para

11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

Petition allowed in aforesaid terms. Interim order is made absolute subject to strict compliance of all terms and conditions. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

29.08.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.