

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

CRM-M-6541-2023

Date of Decision: 27.02.2023

LOKESH KUMAR

...Petitioner

Versus

STATE OF U.T. CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Robin Singh Hooda, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. P.P. U.T., Chandigarh.

Mr. Lakshay Bector, Advocate
for the complainant.

HARSH BUNGER, J.

Petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail in case FIR No.38 dated 21.04.2022, registered under Sections 406, 420, 467, 468, 471 of the Indian Penal Code, 1860, at Police Station Sector 19, Chandigarh.

The above-said case FIR has been registered on the complaint made by one Ramlal Thakur, resident of House No.687 Super Corporative Building Society, Sector 48-A, Chandigarh, who has stated that he retired as Registrar Education from the Office of Director Higher Education U.T.. Chandigarh and was intended to purchase flat in Chandigarh, for which, he consulted one Lokesh Kumar (present petitioner), property dealer who is running his business under the name and style of M/s Dev Associates, SCO 76-77, Sector 8C, Chandigarh and Dev Home Infrastructure SCO 73-74-75,

Sector 17-D, Chandigarh, in the month of February-2018. It is submitted that said Lokesh Kumar (present petitioner) showed the complainant one house i.e. House no.43, Sector 18-A in Chandigarh, for which, he projected himself to be the absolute owner and hence, an agreement to sell its 20% share was executed between the parties. It is averred that the date of execution and registration of sale deed was fixed on or before 25.04.2018, which was further extended till 20.07.2018 at the request of said Lokesh Kumar. It is further submitted that the complainant handed over a cheque bearing No.253308 dated 17.02.2018, amounting to Rs.20 lacs, drawn on State Bank of India, to the petitioner and thereafter, also paid stamp duty for Rs.2,75,000/- vide TR No.232 and scroll number 3336 on 12.07.2018, however, on the date fixed for executing sale deed, neither the petitioner nor owner of property turned up and complainant had to seek refund of stamp duty, which was refunded to him after deduction i.e. Rs.2,47,500/- on 25.12.2018. On 19.11.2018, Lokesh Kumar (present petitioner) showed inability of the owner to come from abroad and rather suggested to give the complainant another property in Sector 19-B, Chandigarh. Accordingly, after mutual cancellation of the first agreement, another agreement for 30% share of House No.1205, Sector 19-B, Chandigarh was finalized for Rs.85,00,000/-. The complainant, out of the said amount of Rs.85,00,000/-, transferred Rs.69,25,000/- in favour of said Lokesh Kumar (present petitioner) on different dates but this time too, the petitioner failed to get the registry done and kept putting off the matter. On the basis of said allegations, the FIR in question has been registered against Lokesh Kumar (present petitioner).

Apprehending his arrest in this case, the present petitioner approached the Court of Additional Sessions Judge, Chandigarh, seeking anticipatory bail; however, the same was rejected vide order dated

31.01.2023 (Annexure P-1). Accordingly, the petitioner has filed the instant petition before this Court seeking anticipatory bail.

Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in the present case, whereas, no offence is made out against him as he has not committed any fraud and cheating. He further submitted that the allegations levelled in the FIR that the complainant had paid Rs.69,25,000/- to the petitioner in respect of agreement for 30% share of House No.1205, Sector 19-B, Chandigarh, out of the total finalized amount of Rs.85,00,000/- and upon failure of the petitioner to get the registry done, nothing has been returned to him, are totally false and baseless as an amount of Rs.63 lacs was already returned to the complainant (15 lacs by the petitioner and Rs.48 lacs by the owner of the property). Learned counsel further submitted that it was the only original owner of the house, who resiled from executing the sale deed, due to which, the petitioner could not get the sale deed executed. Learned counsel contended that the petitioner is otherwise ready to settle the dispute with complainant and his bail application was wrongly dismissed by the Additional Sessions Judge, Chandigarh. Learned counsel submitted that the petitioner is ready and willing to join investigation as and when required by the Investigating Agency and accordingly, prayer for grant of anticipatory bail has been made.

On the other hand, learned State counsel as well as learned counsel for the complainant have opposed the prayer of anticipatory bail to the petitioner on the ground of seriousness of the offence and it has been submitted that the petitioner is a habitual offender as apart from the present case, there are five more cases registered against him; hence, he does not deserve the concession of anticipatory bail.

I have heard learned counsel for the parties and have perused the paper book with their able assistance.

During the course of hearing, learned counsel for the petitioner was asked to get necessary instructions from his client as to whether he was ready to make the payment to the complainant, even in instalments. Initially, learned counsel for the petitioner had stated that the petitioner was willing to repay and he sought time to seek instructions, which was granted, however, subsequently no such stand for settlement of dispute was forthcoming. Rather, while referring to para No.2 of the petition, learned counsel for the petitioner submitted that the money stood already paid to complainant and the petitioner does not have any financial liability towards the complainant. Said para No.2 of the petition reads as under :-

“2. That from the bare perusal of the above said FIR, it is crystal clear that the complaint was made by the complainant on 21.04.2022 to the police, alleging that the complainant had paid Rs.69 Lakhs on different dates to the petitioner and nothing has been returned by him, whereas amount of Rs.15 lakhs was returned by the petitioner and Rs.48 lakhs have been returned by the owner of the property to the complainant. Thus amount of Rs.63 lakhs have already been returned and some amount of stamp fee has also been returned.”

Learned counsel for the complainant has submitted that the averments made in para No.2 of the petition are absolutely false and misleading as no amount has been returned by the petitioner to the complainant. He further submitted that there is no basis for the petitioner for making this averment and neither any proof in that regard has been placed on record nor any such proof has been brought forth by the petitioner before this Court.

I have considered the petitioner's plea of payment having already been made to complainant; however, I am unable to accept the

same, as no document/evidence has been shown to substantiate these contentions.

Learned counsel for the petitioner has raised another plea that the matter is purely a civil dispute, which has been given the colour of criminal nature and in case, any amount is to be recovered by the complainant from the petitioner then he may file a suit for recovery or take any civil action. This plea on behalf of the petitioner deserves to be rejected at the outset as the said stand taken by the petitioner shows his adamant attitude. Petitioner has not placed on record any material to suggest that the prosecution launched by complainant is false. The Courts are required to do substantial justice and not to let offenders go scot-free on the pretext of such pleas.

Learned State counsel has further informed that in one case FIR No.51 dated 21.04.2022 under Sections 420, 467, 468 and 471 of the Indian Penal Code, registered at Police Station North, Chandigarh, the anticipatory bail plea of the petitioner has been rejected by a Co-ordinate Bench of this Court in **CRM-M-55776-2022** on 20.02.2023 and the said fact has not been disputed by learned counsel for the petitioner.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

In the instant case, grave and serious allegations have been made against the petitioner regarding cheating, forgery, etc. The custodial interrogation of the petitioner is found to be necessary for complete and effective investigation into the *modus operandi* of the petitioner. In case, custodial interrogation of the petitioner is denied to the investigating

agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

In case of *State represented by the C.B.I. versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble the Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful information.

Finding no merits in this petition, the same stands dismissed accordingly.

It may be mentioned here that nothing discussed here-in-above shall have any bearing on the merits of the case.

February 27, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No