

203 IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-12961 of 2022(O&M)  
Date of Decision: 13.03.2023

**Naresh Kumar**

...Petitioner

**Versus**

**State of Punjab**

...Respondent

**CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH**

**Present:- Mr. Inderjit Sharma, Advocate  
For the petitioner.**

**Mr. C.L. Pawar, Addl. AG Punjab.**

**Mr. Munish Puri, Advocate  
For the complainant.**

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**KARAMJIT SINGH, J.**

The present petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case having FIR No. 18 dated 25.02.2022, registered under Sections 417 and 420 IPC at Police Station Division No.1, Pathankot.

As per the allegations recorded in the FIR, the petitioner and his father Harbans Lal entered into an agreement to sell the property in question with complainant Deepak Kumar and in this regard agreement to sell was executed between the parties on 02.07.2019 and the entire sale consideration of Rs.46,00,000/- has been received by the vendors from the complainant. That thereafter Harbans Lal died while the petitioner failed to execute the sale deed in favour of the complainant, who is his real brother and the petitioner also failed to return the sale consideration

which was received by him and his father at the time of execution of agreement to sell dated 02.07.2019.

The counsel for the petitioner, *inter alia*, contends that the entire dispute between the parties is of civil nature and the petitioner has already filed suit for declaration that the aforesaid agreement to sell is a fake document, while the complainant has filed suit for specific performance of the aforementioned agreement to sell. The counsel for the petitioner further submits that the petitioner has joined the investigation with the police in compliance of the order of interim bail passed by this Court and that the entire case is based on documentary evidence which has already been collected by the investigating agency.

The present petition is contested by the counsel for the complainant who submits that the petitioner is simply denying the execution of agreement to sell dated 02.07.2019. The counsel for the complainant further submits that at the time of execution of the said agreement to sell certain payments were made through cheques and record regarding the same is available with the concerned bank. The counsel for the complainant further submits that there was clear *malafide* intention on the part of the petitioner to defraud the complainant at the time of execution of agreement to sell in question and at that time payment of Rs.10,00,000/- was made by the complainant to the petitioner and his father Harbans Lal as earnest money. The counsel for the complainant further submits that the custody of the petitioner is required for recovery of the entire sale consideration, already received by him.

The State counsel on instructions from ASI Kuldeep Raj submits that the petitioner has joined the investigation with the police and is not required for further investigation or custodial interrogation.

I have considered the submissions made by counsel for the parties.

Admittedly, the present FIR is based on agreement to sell dated 02.07.2019. It is settled law that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Undoubtedly, in the present case the petitioner is real brother of the complainant and the another person who executed agreement to sell in question was their father who has since died. It is a matter of evidence as to whether the petitioner and his father entered into aforesaid agreement to sell with the complainant with *malafide* intention from the very beginning to deceive the complainant. Further, a criminal Court exercising jurisdiction to grant bail/ anticipatory bail is not expected to act as a recovery agent to realize the dues of the complainant and that too without any trial, as has been held by the Hon'ble Supreme Court in **SLP(Crl.) 1274 of 2021** Manoj Kumar Sood & Anr. Vs. State of Jharkhand, decided on 19<sup>th</sup> March, 2021. Apart from this, in the instant case the petitioner who has joined the investigation is not required by the police for any further investigation or custodial interrogation. Furthermore, the petitioner has filed civil suit challenging the genuineness of the agreement to sell dated 02.07.2019 while the complainant has filed suit for specific performance on the basis of the said agreement to sell. Besides, the entire case is based on documents which are already available with the police.

In view of the matter, no purpose is going to be served even if the petitioner is subjected to custodial interrogation at this point of time. Thus, without commenting on the merits of the case present petition is allowed and order of interim bail dated 29.03.2022 is hereby made absolute, subject to the conditions as envisaged under Section 438(2) Cr.P.C.

**13.03.2023**  
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**(KARAMJIT SINGH )**  
**JUDGE**

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