

2023:PHHC:091108

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

205+101

CRM-M-18932-2023 (O&M)
Date of Decision : 18.07.2023

Devinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. J.P.S. Brar, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, D.A.G., Punjab.

Mr. S.K. Yadav, Advocate for the complainant.

NAMIT KUMAR, J. (ORAL)

CRM-28257-2023

Prayer in the present application filed under Section 482 of Cr.P.C. is for placing on record detailed reply filed by the complainant along with certain documents.

For the averments made in the application, the same is allowed and reply filed by the complainant along with relevant documents are taken on record.

CRM-M-18932-2023

1. The petitioner has filed the present petition under Section 438 of Cr.P.C. seeking grant of anticipatory bail in case FIR No.06 dated 27.01.2023 registered under Section 420 of IPC at Police Station Lakhewali, Sri Muktsar Sahib.

2. Brief facts of the case are that the above-said FIR was registered on the written complaint filed by complainant-Navjot Singh, who alleged that he, after selling his land at village Jhanda Kalan, contacted Sukhdev Singh to purchase land at Sri Muktsar Sahib and then he received call from Sukhwinder Singh, who told that he has a land and he can get him that land. Thereafter, he showed him land of Davinder Singh (the petitioner) of village Khunde Halal and they agreed to purchase 6 acres of land in sum of Rs.17,40,000/- and agreement to sell was executed on 21.06.2022 and complainant gave total Rs.15,00,000/- and agreed to pay Rs.8,00,000/- on 01.09.2022 and then on 31.08.2022 he gave Rs.8,00,000/- through two cheques and paid total Rs.23,00,000/- but now, he came to know that Davinder Singh (the petitioner) has earlier also executed several agreements to sell through Sukhdev Singh and Sukhwinder Singh and when he got issued Rapat, he came to know that land has been mortgaged vide order of learned Court dated 04.11.2022 and he prayed that action be taken against the accused.

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The petitioner has not committed any offence as alleged in the FIR. He further submits that the complainant is well aware about the attachment of property with Axis Bank as the same was mentioned in the agreement to sell. He further submits that the whole case is based upon documentary evidence which is already in custody of the Investigating Officer as such custodial interrogation of the petitioner is not required in the case. The

petitioner is ready and willing to join the investigation. Therefore, he may be granted anticipatory bail.

4. Per contra, learned State counsel assisted by learned counsel for the complainant have vehemently opposed the present petition on the ground that the petitioner has cheated the complainant for an amount of Rs.23,00,000/-. It was never disclosed by the petitioner that he has already taken a loan of Rs.11,50,000/- against the property in question. On 30.12.2022, the petitioner appeared before Sub Registrar and filed an application that the agreement of the petitioner dated 21.06.2022 is forged one, just to defeat the right of the complainant. The petitioner has already agreed to sell the same land to some other persons namely Rana Singh and Gursewak Singh and he has also obtained Rs.30,00,000/- from them. Learned counsel further argued that in a complaint case filed under Section 138 of the Negotiable Instruments Act, 1881, the petitioner has already been declared proclaimed person vide order dated 31.01.2020 passed by learned Chief Judicial Magistrate, Sri Muktsar Sahib. However, the petitioner has not mentioned anything in the instant petition with regard to his proclamation. The custodial interrogation of the petitioner is required in the case. Therefore, the present petition may be dismissed.

5. I have heard learned counsel for the parties and perused the record.

6. Perusal of FIR shows that the allegations against the petitioner are grave and serious in nature. As per allegations, the

complainant-Navjot Singh met with the petitioner through Sukhwinder Singh and paid Rs.23,00,000/- in total to the petitioner for purchasing his land. An agreement to sell was executed on 21.06.2022 but later on, the complainant came to know that the said land has already been mortgaged by the petitioner and he has also entered into Ikrarnama Tabadla of same land in the year 2019. The petitioner has taken a loan of Rs.11,00,000/- against the property in question which is already attached and found in litigation. When the complainant asked the petitioner for returning the amount, the petitioner refused to do so. Custodial interrogation of the petitioner is required to recover the cheated money, to ascertain the true facts and involvement of other persons, if any.

7. Moreover, the petitioner has already been declared proclaimed person vide order dated 31.01.2020 passed by learned Chief Judicial Magistrate, Sri Muktsar Sahib in a complaint case filed under Section 138 of the N.I. Act which fact is not mentioned by the petitioner in the present petition. It is a well-settled proposition of law that a person who does not approach the Court with clean hands and played fraud with the Court, is not entitled for any relief. Reference in this regard can be made to the judgments of the Hon'ble Supreme Court in ***Dalip Singh Vs. State of U.P. and others : (2010) 2 SCC 114*** and ***Amar Singh Vs. Union of India and others : 2011(7) SCC 69.***

8. As per law laid down by the Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Pradeep Sharma : (2014) 2 Supreme***

Court Cases 171, power exercisable under Section 438 Cr.P.C. is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his/her liberty.

9. Having regard to the totality of facts and circumstances of the case aforementioned, serious nature of averments qua cheating, fraud made against the petitioner, I do not find it a fit case for grant of anticipatory bail to the petitioner. Hence, the present petition is dismissed.

10. However, anything observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

18.07.2023
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No