

209 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-30120-2023 (O&M)
Date of Decision:29.11.2023

Avtar Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ajay Kumar, Advocate for the petitioner.
Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.
Mr. Shashi Kumar Yadav, Advocate for the complainant.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Section 438 Cr.P.C. seeking concession of anticipatory bail to the petitioner in FIR No.64 dated 13.09.2022, under Sections 420 and 406 IPC, registered at Police Station Block Majri, District SAS Nagar (Mohali).

2. Learned counsel for the petitioner submitted that the allegations in the present case are that there was an agreement to sell between the petitioner and the complainant and the petitioner had allegedly taken an amount of Rs.12,00,000/- as earnest money but thereafter there had been dishonour of the agreement and the property was never sold. He further submitted that the complainant had never filed any civil suit for specific performance or any other nature and even otherwise also the petitioner has already paid Rs.4,38,000/- back to the complainant. While referring to the notice of motion order dated 09.06.2023, learned counsel further submitted that the petitioner had rather stated before this Court that he will pay Rs.1,00,000/- to the complainant within a period of 10 days and will continue pay Rs.1,00,000/- per month. Thereafter learned counsel further submitted that even in pursuance of the aforesaid order

the petitioner had already paid Rs.2,00,000/-(i.e. Rs.1,00,000/-+ Rs.1,00,000/-) to

the Investigating Officer of the present case which has now since been paid by way of a demand draft to the complainant and in this way a total of Rs.4,38,000/- stands paid to the complainant. He further submitted that in pursuance of the interim order passed by this Court on 09.06.2023, the petitioner has already joined investigation and he has fully cooperated with the investigation process and therefore his interim bail granted vide order dated 09.06.2023 may be confirmed.

3. On the other hand Mr. Ramdeep Partap Singh, Sr. DAG, Punjab, on instructions, stated that in pursuance of the order dated 09.06.2023 passed by this Court, the petitioner has joined the investigation and is fully cooperating with the investigation process and is not required for custodial interrogation.

4. Mr. Shashi Kumar Yadav, Advocate has caused appearance on behalf of the complainant and has filed power of attorney, which is taken on record. He opposed the grant of bail to the petitioner by stating that when the notice of motion order was issued, the petitioner himself has stated that he will pay Rs.1,00,000/- within a period of 10 days and thereafter Rs.1,00,000/- per month and it was also directed that in case, the petitioner makes default regarding the payment as committed by him, the benefit of interim protection shall automatically stand vacated. He further submitted that the petitioner has run away from his commitment and as such he does not deserve the concession of anticipatory bail. He further submitted that so far as the aforesaid Rs.2,00,000/- is concerned which has been given to the Investigating Officer of this case, the same has already been received by the complainant and a total amount of Rs.4,38,000/- has been received out of whole amount of Rs.12,00,000/-.

5. I have heard the learned counsel for the parties.

6. This Court while issuing notice of motion had granted interim bail to the petitioner on 09.06.2023 and today learned State counsel, on instructions,

stated that the petitioner has already joined investigation and he has fully cooperated with the investigation process and specifically stated that the petitioner is no longer required for any custodial interrogation.

7. However, the objection raised by learned counsel for the complainant also has to be considered. Learned counsel for the complainant submitted that when notice of motion was issued by a Coordinate Bench of this Court on 09.06.2023, the petitioner had himself stated that he will deposit Rs.1,00,000/- within ten days and thereafter Rs.1,00,000/- per month and now since he has deposited Rs.2,00,000/- only and has not deposited the entire amount, he is not entitled for anticipatory bail.

8. This Court is of the view that the primary issue in the present FIR appears to be civil in nature and the issue raised in the present case is of financial dispute between the parties of taking regarding earnest money on the basis of agreement to sell and thereafter dishonouring the same. While considering the prayer for grant of anticipatory bail, the Court has to strike a balance between the allegations on the one hand and the Fundamental Rights contained under Article 21 of the Constitution of India on the other hand. The right to liberty under Article 21 of the Constitution of India has predominance and is a dominant factor while considering the grant of bail to any individual. In pursuance of the notice of motion order it is not disputed that the petitioner has paid Rs.2,00,000/- and out of the total amount of Rs.12,00,000/- the petitioner has already paid a total amount of Rs.4,38,000/-. The complainant has admittedly not filed any civil suit in this regard.

9. This Court is of the view that whenever any such condition is imposed for grant of bail regarding deposit of money, the same is an onerous condition and it has been repeatedly held by the Hon'ble Supreme Court that such onerous condition cannot be imposed for the grant of bail. In the present case

almost 1/3rd amount of the total amount has already been paid to the complainant. This Court is of the considered view that the police cannot become a recovery agent and non-recovery of any amount cannot become a ground for denial of anticipatory bail to the petitioner. Consequently, the objection which has been raised by the learned counsel for the complainant is not sustainable.

10. In view of the above, the present petition is allowed and the order dated 09.06.2023 is hereby made absolute.

11. At this stage, learned counsel for the complainant submitted that had the petitioner not given the statement that he will pay Rs.1,00,000/- within a period of ten days while issuing notice of motion and thereafter will pay Rs.1,00,000/- per month and as such this Court ought not have granted interim relief to him. This Court is of the view that such kind of hypothetical arguments are not sustainable. He also raised another argument during the course of arguments that on the last part of the order dated 09.06.2023 it was so stated that if the petitioner does not make the payment, the interim protection shall automatically stand vacated.

12. The aforesaid argument is also not sustainable in view of the fact that the interim order dated 09.06.2023 passed by this Court has now finally merged in the final order passed by this Court today.

(JASGURPREET SINGH PURI)
JUDGE

29.11.2023

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