

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-38109-2022 (O&M)
Date of Decision:- 19.1.2023

Jagdish @ Jagdish Chander

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Mazlish Khan, Advocate for the petitioner.

Mr. Gurmeet Singh, DAG, Haryana.

Mr. Shalender Mohan, Advocate for respondent no. 2.

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of anticipatory bail in respect of a case registered vide FIR No. 442 dated 4.12.2021 under Sections 406, 420, 506/120-B of Indian Penal Code at Police Station Sadar Hansi District Hansi (Haryana).
2. At the time of issuance of notice of motion on 26.8.2022, the following order was passed :

“This is third petition filed on behalf of petitioner seeking grant of anticipatory bail in respect of a case registered against him vide FIR No. 442, dated 04.12.2021, Police Station Sadar Hansi, District Hansi, under Sections 406, 420, 506, 120-B IPC, the earlier two having been dismissed without having been adjudicated on merits.

Learned counsel for the petitioner has explained that in fact the first petition came to be withdrawn on account of some misunderstanding as there was miscommunication between the petitioner and the counsel.

The allegations, in nutshell, as levelled in the FIR which was lodged at the instance of Sumitra Yadav are broadly to the effect that the petitioner-Jagdish was owner in possession of 35 kanals and 1 marla of land and had agreed to sell the same to the complainant on 15.4.2021 when an earnest money of Rs.25,15,000/- was also paid to aforesaid Jagdish. The date for execution of sale deed was fixed as 21.10.2021. Later the accused represented that he was in need of another Rs.20 lakhs and the complainant agreed to pay the said amount provided the accused executes a sale deed in respect of a part of 35 kanals 1 marla which had been agreed to be sold. Consequently, a sale deed in respect of 13 kanals and 2 marlas was executed in favour of complainant's husband and an amount of Rs.20,25,000/- was paid. The complainant alleged that later the accused refused to get the sale deed executed in respect of the remaining land and rather disclosed to the complainant that he had already sold the remaining land measuring 21 kanals 19 marlas to co-accused vide sale deed dated 25.10.2021.

Learned counsel for the petitioner submits that even if all the allegations as levelled in the FIR are taken to be correct, the same at best would constitute a civil liability for not having fully honoured the agreement to sell dated 15.4.2021 inasmuch as a part of the agreement can be said to have been duly honoured. It has further been submitted that the complainant has already instituted a civil suit for specific performance which is still pending.

Learned counsel has submitted that in fact previously the matter had been got inquired into by Economic Cell Branch, Hansi and the Economic Cell Branch found the matter to be a civil nature and had submitted its report dated 26.11.2021 (Annexure P-1) to the higher police authorities. It has been submitted that somehow despite the said report the police has chosen to proceed against the petitioner as the sons of the complainant are well placed and while one of them is serving in administrative services the other is in police.

Notice of motion for 17.1.2023.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.”

3. Learned counsel for the petitioner has submitted that even if all the allegations, as levelled against petitioner are accepted to be correct, the same

at best would constitute a civil liability and in respect of which civil suit already stands filed.

4. Opposing the petition, the learned State counsel, assisted by counsel for the complainant, has submitted that since there is direct evidence to the effect that the petitioner had received an amount of Rs. 25,15,000/- and Rs.20,25,000/- and in respect of which the petitioner had duly executed receipts, his complicity is clearly evident. It has been submitted that the petitioner having sold off the land to somebody else after having accepted amounts from the complainant had clearly cheated the complainant and as such, does not deserve the concession of anticipatory bail. Learned State counsel has informed that pursuant to interim directions issued by this Court the petitioner has since joined investigation and is not required for any custodial interrogation.
5. This Court has considered the rival submissions.
6. It is not in dispute that sale deed in respect of a part of 35 kanals of land had been executed i.e. in respect of 13 kanals in favour of complainant. It is also evident that the petitioner did not execute sale deed in respect of the remaining land. However, the question as regards the said facts constituting a criminal offence would be debatable. The complainant, in any case, has already filed a civil suit for specific performance, which is still pending.
7. Having regard to the said facts and circumstances of the case and also the fact that the petitioner is stated to have joined investigation and is not stated to be required for any custodial interrogation, the petition is accepted and the interim directions issued by this Court vide order dated 26.8.2022 are hereby made absolute, subject to the condition that the petitioner shall join

investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

19.1.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No