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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM M 41802-2023
Date of Decision 04.09.2023*Col. Jasjit Singh Nijjar (retired)**.....Petitioner**versus**State of Punjab**...Respondent***Coram Hon'ble Mr. Justice Rajbir Sehrawat**

Present: Mr. Hitesh Verma, Advocate for the petitioner

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Rajbir Sehrawat, J, (Oral)

1) The present petition has been filed under Section 438 of the Code of Criminal Procedure, praying for grant of anticipatory/pre-arrest bail to the petitioner in case FIR No. 95 dated 04.06.2023, registered under section 420 of the Indian Penal Code, at Police Station Navi Baradari District Jalandhar (Annexure P-1).

2) It is submitted by counsel for the petitioner that the case against the petitioner is totally false and concocted. The petitioner is not involved in the crime as alleged against him. In fact, brother in-law of the complainant and the petitioner were posted together in the Army. Since the petitioner was not in a position to maintain the property in question while posted at distant places, he executed general power of attorney in favour of the complainant - Avtar Singh Azad qua dwelling unit No. 2530-B (2nd floor) Block No. 11, Pradip Vihar, AWHO, Sector 47-C, Chandigarh. The complainant, thereafter, fraudulently applied for transfer of the property in question in his own name. However, when the Army Welfare Housing

Organization, New Delhi (AWHO) asked the petitioner for his consent, only then, the petitioner came to know that he is being defrauded by the complainant. As a result thereof, the petitioner had cancelled the said irrevocable power of attorney in favour of the complainant in the year 2019 and also filed a civil suit for possession, which is still pending. Therefore, there is no question of fraud being committed by the petitioner upon the complainant. Counsel has further submitted that version of the complainant is shown to be false for the simple reason that on the one hand, the complainant had claimed that on 08.10.1998, he had sold 50% share of the said property to one Manjinder Singh son of Surjit Singh, resident of House No. 2477/17, Ramsar Road, Amritsar, Punjab and on other hand, in the year 2018, the complainant had applied for transfer of the entire property in his own name. Even the version of the complainant that one Maruti Car was given to the petitioner as a part payment of the sale consideration of the property in dispute, is false. There is no receipt or agreement to sell, even shown by the complainant. Therefore, the entire case of the complainant is concocted and fabricated one. Hence, the petitioner deserves to be protected against his arrest.

3) Notice of motion.

4) Mr. Sandeep Singh, Additional Advocate General, Punjab accepts notice on behalf of the respondent State. Mr. I S Ratta, Advocate appears on behalf of the complainant.

5) Counsel for the State, being instructed by ASI Balwinder Singh and being assisted by counsel for the complainant has submitted that way back in the year 1991, the petitioner had executed irrevocable power of

attorney in favour of the complainant. The petitioner remained silent for about 28 years and had not even claimed possession of the property in dispute; which itself shows that the petitioner had, in fact, sold the property to the complainant for consideration. Cancellation of GPA is only a result of fraud on the part of the petitioner. It is also submitted by counsel for the petitioner that during the entire period of existence of said power of attorney, not even rent was ever claimed by the petitioner from the complainant. This itself shows that the complainant had rightly been in possession of the property in dispute as a transferee. Not only the irrevocable power of attorney, even the original documents relating to the allotment of the property were handed over to the complainant. This substantially shows that the alleged power of attorney was intended to be for the purpose of sale transaction itself. The said documents are available with the complainant even now.

6) Counsel for the complainant while further supplementing the arguments raised by the State Counsel has submitted that the irrevocable power of attorney in favour of the complainant was not executed only for managing the property in dispute, rather, the same was in lieu of sale consideration, which was duly paid by the complainant. As is evident, some part of the money was transferred to the petitioner through bank accounts; some amount was received by the petitioner in cash; and some portion of sale consideration was adjusted through transfer of the Maruti Car in the name of the petitioner. So far as the filing of civil suit for possession of the said property by the petitioner is concerned, the complainant is contesting the said suit to the hilt and would expose the petitioner before the civil Court

as well. However, the fact remains that the petitioner had committed fraud on the complainant, therefore, he does not deserve to be shown any leniency by extending him the benefit of concession of grant of anticipatory bail.

7) In view of the facts and circumstances available on the file, as well as submissions made by counsel for the State and counsel for the complainant, this Court does not find it appropriate to interfere in the matter so as to grant concession of anticipatory bail to the petitioner.

8) Dismissed.

(Rajbir Sehrawat)
Judge

September 04, 2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No