102 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-1643-2024
Decided on:-03.04.2024

Mohinder Pal Singh ....Petitioner..

vs.

State of Punjab ....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sanjeev Manrai, Sr. Advocate with
Mr. Rohit Bhardwaj, Advocate for the petitioner.

Mr. Kewal Singh, Addl. A.G., Punjab.

Mr. SPS Sidhu, Advocate for the complainant(s).
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HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Section 438 Cr.P.C., prayer has been made for grant of anticipatory bail to the petitioner in case FIR No. 141, dated 24.11.2023, registered under Sections 406, 420 and 120-B IPC, at Police Station Urban Estate, District Patiala, wherein the allegations against the petitioner are of having defrauded the complainant by having entered into an agreement to sell against receipt of earnest money of Rs.1.50 crore (Rs. One crore fifty lakhs) and later having got set-up a prior agreement dated 23.12.2019 regarding same property so as to cheat the complainant.

2. Learned Senior counsel appearing on behalf of petitioner submits that the present is purely a case of civil nature and a civil suit regarding enforcement of the agreement to sell relied upon by the complainant(s) is already pending consideration before the Civil Court and earlier a suit for permanent injunction (though the same now stands

withdrawn by the petitioner) was also filed at the instance of petitioner against the complainant and three others for restraining them to interfere in his possession and therefore argues that the registration of present FIR on the same cause of action amounts to misuse of process of law as well as of the State machinery.

2.1 Learned Senior counsel further points out that in fact the registration of the FIR in hand is an attempt to compel the petitioner to refund the earnest money and no offence as alleged is made out. No other argument has been addressed by the learned Senior counsel for the petitioner.

3. On the other hand, prayer made herein has been vehemently opposed by learned counsel representing the complainant(s) while submitting that even as per the own pleadings, the petitioner in his suit for permanent injunction has admitted, the execution of the agreement to sell dated 30.02.2020 (inadvertently typed) in favour of the complainant(s) besides, even admitting the receipt of earnest money.

3.1 He further points out that being fully conscious that the enforcement of agreement was a civil cause, at the first instance the complainant never approached the police authorities for registration of the FIR, thus, the complainant(s) approached the Civil Court having filed a suit for possession by way of specific performance, however, it was only during its pendency when an application was filed in the said, at the instance of one Sanjeev Jethi, relying upon an agreement to sell dated 23.12.2019 executed in his favour by the petitioner regarding the same property, realizing the fraud committed by the petitioner, a complaint before the police authorities was moved which resulted into registration of the FIR in question.

3.2 Learned counsel also points out that the agreement to sell dated 23.12.2019, set up by Sanjeev Jethi on the face of it, is a forged and fabricated document and has been created by him in active connivance with the petitioner, just to defeat the legal rights of the complainant(s). A photocopy of the said agreement has been handed over to this Court, which is taken on record as Mark "X" and a copy thereof has been supplied to learned Senior Counsel representing the petitioner as well. While referring to the same, he further points out that the entire earnest money of Rs.15 lakhs was paid in cash and the total consideration fixed under the said agreement was Rs.1.5 crore, whereas, in less than a period of 03 months thereafter, an agreement to sell was executed by the petitioner, in favour of the complainant(s) for consideration of Rs.3,76,00,000/- which itself reflects upon the authenticity and the genuineness of the document dated 23.12.2019.

3.3 Having concluded his arguments on merits, yet, in order to get rid of the forced litigation, learned counsel for the complainant(s) even made an offer to the learned Senior counsel representing the petitioner that the petitioner may either transfer the property in question in favour of the complainant(s) by way of executing a sale deed in their favour against receipt of balance sale consideration, having admitted the execution of the agreement to sell or even could return the earnest money within a reasonable period as per his convenience, however, to which, on instructions, learned Senior counsel has flatly refused.

4. I have heard learned counsel for the parties and gone through the

paper book. I am unable to find any substance in the submissions made on behalf of the petitioner.

5. No doubt, in cases of cheating and fraud, there is always some element of civil nature, however, a cumulative analysis of facts and circumstances and the documents available on record makes it evident that the present is not a pure and simple case of civil nature regarding enforcement of an agreement to sell or an arm-twisting tactics on the part of the complainant(s)-vendee as clear cut ingredients of criminality are involved.

6. In the present case, cheating, fraud as well as criminal breach of trust on the part of the petitioner is writ large. Having entered into an agreement to sell in favour of the complainant(s) against a total sale consideration of Rs.3,76,00,000/-, against receipt of Rs.1.5 crore as earnest money, at every step, he deliberately and consciously creating hurdle about its lawful enforcement. Initially, the petitioner tried to stall the rights of the complainant under the agreement by having filed a suit for permanent injunction; having lost the application for grant of interim injunction vide order dated 16.08.2021, later he, withdrew the said suit on 09.12.2023; simultaneously, upon filing of a suit for possession by way of specific performance at the instance of complainant; despite having admitted the execution of the agreement in their favour in his written statement, got filed an application through one Sanjeev Jethi for impleadment as party in the said suit, based on some prior agreement to sell dated 23.12.2019 executed in his favour regarding the same property against total sale consideration of Rs.1.5 crore with Rs.15 lakhs received as earnest money in cash. The intent

of the petitioner to deceive the complainant(s) is apparent on record as he never ever choose to file reply to the application filed under Order 1 Rule 10 CPC, filed at the instance of Sanjeev Jethi, seeking his impleadment in the suit for possession by way of specific performance filed at the instance of complainant to either admit or deny the factum of execution of agreement to sell dated 23.12.2019 by him. The petitioner despite having a clear cut chance to rebut and refute the execution of agreement to sell dated 23.12.2019 rather remained dormant, consciously avoiding to controvert the same which on the face of it, reflects his active and meaningful connivance with applicant-Sanjeev Jethi as an another attempt to defeat the substantial rights of the complainant under the agreement to sell in their favour.

7. From the facts & circumstances of the present case, it is apparent that right from the inception of the complaint was having fraudulent intention to deceive the complainant(s) of huge sum of earnest money entrusted to him under the agreement and misappropriated the same. The earnest money was handed over to the petitioner by the complainant, as a result of dishonest inducement regarding transfer of property in question in favour of the complainant(s). Having failed to deny the execution of agreement to sell dated 23.12.2019, in favour of Sanjeev Jethi by not filing reply to his application for impleadment, the petitioner, prima facie accepted its execution thereby apparently making it a clear cut case of cheating and criminal breach of trust and thus, the petitioner is not entitled for grant of discretionary relief of anticipatory bail in such circumstances. Reference in this regard can also be made to a decision rendered by the Hon'ble Apex Court in case of ***"Srikant Upadhay others vs. State of Bihar and another"***

reported as 2024 INSC 202. Relevant paragraph No.8 of the said judgment is reproduced hereunder:-

> *"It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J.Mannan & Anr.)"*

8. Equally important, the conduct of the petitioner while pursuing the present petition is not even above board. On 12.01.2024, when the matter was taken up for the first time, the following order was passed:-

> *"Vakalatnama filed on behalf of the complainant is taken on record.*
>
> *Learned Senior Counsel for the petitioner, on instructions, submits that the agreement dated 23.12.2019 purportedly executed by the petitioner, neither have his signatures, nor was any such agreement executed with one Sanjeev Jethi. He also submits that the petitioner is even ready to refund the money received under the agreement in question alongwith interest thereupon.*
>
> *Let an affidavit be filed on behalf of the petitioner in the aforesaid regard, so as to send the original document to FSL for examination.*
>
> *List on 15.01.2024."*

Thereafter on 13.03.2024, the following order as passed:-

"In pursuance to the order dated 12.01.2024, no affidavit has been filed by the petitioner that on 23.12.2019 an agreement executed between the petitioner and Sanjeev Jethi does not bear his signatures. Let the Investigating Agency obtain the specimen signatures of the petitioner and get the same verified from the FSL so as to determine the validity thereof.

Three drafts amounting to Rs.20,00,000/- which were handed over by the petitioner to the respondent on 25.01.2024 have been returned back to learned counsel for the petitioner by the learned counsel representing the complainant.

List on 03.04.2024."

8.1 Strangely enough, the petitioner did not comply with any of the aforementioned two orders. Neither did he file any affidavit, denying his signature over the agreement to sell dated 23.12.2019, nor even he gave his standard signature and only supplied the specimen signatures to the investigating agency, as such, in these circumstances, the petitioner does not deserve the concession of anticipatory bail in the present case, as it would further encourage his dishonest intent and conduct. Resultantly, the present petition is thus, dismissed being devoid of merits.

9. All pending applications also stand disposed of.

03.04.2024 **(HARKESH MANUJA)**
sonika **JUDGE**

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