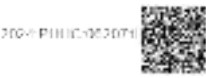


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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-8260-2024 (O&M)
Date of Decision: May 06, 2024

BALWINDER KAURPetitioner
Versus
STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sant Kashyap, Advocate for the petitioner.
Mr. Rahul Jindal, AAG, Punjab.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 438 CrPC, prayer has been made for grant of anticipatory bail in case FIR No.0007 dated 14.01.2023 registered under Sections 406, 420, 120-B of IPC at P.S. Naya Gaon, District SAS Nagar wherein, the petitioner has been implicated with the following allegations:-

“Statement of Varinder Kumar son of Sh Ram Dulara, Resident, # 59, Block-D, Shivalik Vihar, Naya Gaon, District SAS Nagar, Mobile No. 98884-88096. Stated that I am resident of above said address and doing my business at Naya Gaon, Mohali. Today I came present in your office regarding the Petition i.e. CRM-M 36907 of 2022 filed by me before the Hon'ble Punjab and Haryana High Court Chandigarh and Application No. 3059/SSSP dated 19.03.2022. In this regard, I want to inform you that in 2020 I was intending to purchase property. During this time Rajwinder Singh Johal, who is residing in House No. 58-D, comprising in Khewat/Khatoni No.268/293, Kh.No.168/23(8-0), HB-352 (5 marla) situated in front of my house, told me that he wants to sell his house. As the house of Rajwinder Johal is located in front of my house, I was interested in the said house as it suits me. Consequently, I made the deal of this house with Rajwinder Johal and his mother Charanjit Kaur on 05.10.2020 for total consideration of Rs.33 lakhs and an agreement to sell was executed between both parties on 05.10.2020, which bears my signatures as well as of my partner Sher Singh as the purchaser, and also bears signature/thumb impressions of Rajwinder Singh Johal & his mother Charanjit Kaur. Parvinder Kaur w/o Rajwinder Johal and his sister Balwinder Kaur witnessed the said agreement. On the day of the agreement, I issued 02 cheques of Rs.4 lakhs each to Rajwinder

Singh Johal and his mother which have been credited into his account and his mother account as well. The date for execution of registry was fixed as 31.12.2020. However, they did not execute the sale deed in our favour. Rajwinder Singh requested me several times to extend the date for execution of sale deed. When we asked Rajwinder Singh Johal to bring Fard/Jambandi, he told us that he is neither having Fard in his name nor having the sale deed/registry in his name and said that he is having only GPA that too in the name of his father Gurdial Singh, who have already expired. Thus GPA was not valid. Rajwinder Singh Johal had cheated us and executed an agreement and received Rs.8 lakh as earnest money from us for executing the sale agreement whereas he cannot not sell this land. Thereafter, we asked for the return of our money from Rajwinder Singh, he assured us that he will get register the sale deed of land by obtaining GPA in his name from the original owner. But later it came to know that the original owner of the land has also died and the land has been mutated in the name of heirs of the original owner. Rajwinder Singh started telling us that the heirs of original owner, who are no owner of the land are demanding money for execution of sale deed. Thereafter, we directly talked to the original owner and thereupon the original owner executed a regd. GPA in favor of Rajwinder Singh Johal on the basis of which he executed the sale deed of 3 marla in my favour. In the regard, we paid Rs.2 Lakh through Cheque No. 025019 to his sister Balwinder Kaur and Rs.4 lakhs in cash to Rajwinder Singh and Rs.6 lakhs in cash to Harwinder Singh on the asking of Rajwinder Singh so that Rajwinder Singh could get GPA from Harvinder Singh, original owner. Another amount of Rs.15000/- was given in cash on 15.06.2021, the entry whereof is made on the agreement. But when we asked him to execute the sale deed of the entire area, he started pressurizing us to pay double the amount and started saying that if you don't pay as per my demand, then 3 marla land sold to you will be of no use."

2. Learned counsel for the petitioner submits that the present is primarily a dispute of civil nature and the petitioner has no active role to play in the entire sequence. He further submits that even as per the FIR, a sum of Rs.2,00,000/- was received by the petitioner on instructions of her brother namely Rajwinder Singh. He also points out that the trial Court has already granted concession of regular bail to Rajwinder Singh by granting him the benefit of Section 167(2) of CrPC

and thus, the custodial interrogation of the petitioner would not be required. Learned counsel further submits that under similar circumstances, real sister of the petitioner namely Parminder Kaur has already been enlarged on anticipatory bail vide order dated 05.09.2023 and thus, the petitioner deserves to be granted the same benefit.

3. On the other hand, the prayer made herein has been vehemently opposed at the instance of learned State counsel assisted by learned counsel for the complainant while submitting that the case of the petitioner was clearly distinguishable from the case of her sister namely, Parminder Kaur, as no amount was ever received by Parminder Kaur whereas, admittedly, the sum of Rs.2,00,000/- has been paid to the petitioner through cheque bearing No.025019. He further submits that even the co-accused namely Rajwinder Singh was never granted concession of regular bail on merits but was released in terms of Section 167(2) of CrPC as the challan was not presented by the Investigating Agency within the statutory period and thus, the petitioner cannot be granted any benefit of the order dated 11.04.2023.

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

5. In the present case, the reliance placed by the petitioner upon order dated 05.09.2023 passed by Hon'ble Apex Court in case of her sister namely, Parminder Kaur, while granting her concession of anticipatory bail cannot come to her rescue as the said Parminder Kaur never got any benefit against the fraudulent sale of property in favour of the complainant whereas, the present petitioner admittedly

received a sum of Rs.2,00,000/- vide cheque No.025019 against the sale of 3 marlas of land in favour of complainant. A sequence of facts narrated in the FIR make it clear that there was a calculated and pre-determined attempt made by the petitioner and her brother namely Rajwinder Singh to deceive the complainant and cheat him of huge amount as without being the owners of the property in question they entered into an agreement to sell with the complainant, having received earnest money of Rs.8,00,000/- and then having made him part with some money in favour of original owner for obtaining GPA in favour of Rajwinder Singh besides getting a sale deed of 3 marlas of land executed in favour of the complainant against receipt of additional cash as well as other amount through cheques but still defrauded the complainant by refusing him to deliver possession of the said 3 marlas of land.

6. There was a clear-cut attempt on the part of the petitioner and her brother to cheat the complainant, having induced him to purchase the property of which she was not the owner and in such circumstances, the discretionary relief of anticipatory bail cannot be granted in favour of petitioner while considering the nature of allegations and also to ensure free and fair investigation. Grant of benefit of anticipatory bail in favour of petitioner, in the given circumstances would definitely encourage her dishonest intent. Moreover, the petitioner is also one of the beneficiary of entire transaction having received Rs.2,00,000/-, thus, her case is distinguishable from that of her sister namely Parminder Kaur.

7. Reference about anticipatory bail being a discretionary relief 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. In view of the aforesaid, the present petition stands dismissed.

9. Pending application(s), if any, shall also stand disposed of.

06.05.2024

(HARKESH MANUJA)
JUDGE

Tejwinder

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>