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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18707-2024 (O & M)
Date of decision: 23.04.2024

Mohinder Singh

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Nitish Bhatia, Advocate, for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in this petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in FIR No.9 dated 08.01.2014 under Sections 420 and 406 IPC registered at Police Station City Kharar, District SAS Nagar (Mohali).

2. The brief facts of the case are that one Iqbal Singh filed complaints dated 01.09.2011 and 29.09.2011 to the police which on an enquiry culminated into the instant FIR and reads as under:-

“To the Hon'ble S.S.P. Sahib, SAS Nagar, Mohali, Subject, Complaint for taking action against Sohan Singh S/o Amar Singh, Harinder Kaur W/o Sohan Singh and Mohinder Singh S/o Karam Singh. Sir, It is requested that the following persons entered into an agreement to sell 58 marlas, 57 marlas,

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58 marlas, 57 marlas total 220 marlas out of khasra No.588 for total consideration of Rs.40 lacs, copies of which are attached but thereafter they did not start any talk with us for executing the Sale Deed of the above land. That they received Rs.40 lacs from us and now refused to execute the Sale Deed in our favour. They have played fraud with us. 1) Sohan Singh S/o Amar Singh R/o Dulchi Majra, District Ropar (99152-27517). 2) Harinder Kaur W/o Sohan Singh R/o Dulchi Majra, District Ropar. 3) Mohinder Singh S/o Karam Singh R/o House No.29, Near Government Tubewell, Palsaura, U.T., Chandigarh (98144-69794) kindly necessary legal action may be taken against these accused. Thanking you, yours faithfully Sd/- Iqbal Singh 1.9.11 S/o Karnail Singh village Rajindergarh, Tehsil & District Fatehgarh Sahib 9914204213, 9417702425, 9417472555. The SSP Sahib marked the above complaint to the SHO, Police Station, City Kharar for investigation and report but above said Iqbal Singh submitted another complaint No. 1446/peshi/SSP 29/9/11, in which Iqbal Singh wrote that he wanted to get his complaint investigated from Economic Offences Wing, Mohali which was marked by inspector Pritam Singh Incharge Economic Offence Wing to ASI Phool Chand Economic Offence Wing(C) for investigation, the result of which is like this: RESULT REPORT The inquiry report made till now, statement of revenue Patwari, record and agreement to sell has been examined carefully. It has been found from the complaint and statement of the complainant that Iqbal Singh executed four agreements to sell on 8.6.2005 according to which an agreement to sell was executed with Sohan Singh regarding 58 shares (0-58 Marla) khasra No.588 in khewat/khatoni No.640/725 the land situated in Kharar to whom Rs. 10 lac were given at the time of agreement and one more agreement to

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sell on the same day was executed with Smt. Harinder Kaur W/o Sohan Singh S/o Amar Singh R/o Dulchi Majra, District Ropar, regarding 57 shares (0-57 Marla) in the same khasra No.588 in khewat/khatoni Number and Rs 10 lac were given to Harinder Kaur on 8.6.2005 at the time of agreement. One more agreement to sell with Mohinder Singh S/o Karam Singh House No.29, Near Government Tubewell, village Palsaura, U.T. Chandigarh with Iqbal Singh regarding 58 shares (0-58 Marla) and Mohinder Singh received Rs.10 lac at the time of agreement. Mohinder Singh previously executed this agreement with Tara Singh S/o Dharam Singh and Kamla Yashvir W/o Tara Singh R/o Tuto Majra, District Hoshiarpur regarding 115 shares (115 Marlas) out of khasra No.588 and on the same day one more agreement was executed by above said Mohinder Singh with Iqbal Singh regarding 57 shares (0-57 Marla) out of khasra No.588 and received Rs. 10 lac at time of agreement. This agreement was previously executed by Mohinder Singh with Kamla Yashvir Singh W/o Tara Singh. Therefore, on 8.6.2005 Iqbal Singh executed 4 agreements to sell with Sohan Singh, Harinder Kaur and Mohinder Singh and paid Rs.40 lac cash. The date of Sale Deed was fixed as 16.5.2006 in all the 4 agreements and the balance amount was to be given by Iqbal Singh at the time of Sale Deed but in the meantime on 1.7.05 the Commissioner Patiala Division, Patiala stayed his own order of mutation No.20363. So a case started due to stay order on khasra No.588 and on 15.5.06 the date was extended till the pendency of case but Sohan Singh, Harinder Kaur and Mohinder Singh neither returned the amount of the complainant nor did execute the Sale Deed. Mohinder Singh S/o Karam Singh caste Ramgharia House No.29, Palsaura, Near Government Tubewell stated in his statement that he was driver of the vehicle of Sohan Singh. On asking of Sohan Singh he

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executed agreement to sell on 8.6.05 on lower rates previously with Tara Singh S/o Dharam Singh and his wife Kamla Yashvir Singh, R/o Tuto Majra, District Hoshiarpur and thereafter executed two agreements with Iqbal Singh S/o Karnail Singh village Rejindergarh on higher rates. Out of the amount he received from Iqbal Singh, Rs.7,50,000/- Sohan Singh gave to Tara Singh. The balance amount was retained by Sohan Singh with him. I have only put my signatures. From the inquiry report it has also been found as per report of Parwari Tarlochan Kumar, the names of Harinder Kaur W/o Sohan Singh and Kamla Yashvir W/o Tara Singh are not there in the revenue record due to this reason, the agreements made in their names are wrong and Sohan Singh, Harinder Kaur and Mohinder Singh in connivance with each other executed 4 agreements to sell and received Rs.40 lac from Iqbal Singh and till now neither executed Sale Deed in his name nor returned the amount to him. In this regard, after obtaining the opinion of DA Legal, it is recommended to register the FIR. Sd/- Phool Chand ASI EOW(C) dated 27.2.12. On which Inspector Pritam Singh Incharge:-Economic Offences Wing(C) after agreeing with the report of ASI Phool Chand and after obtaining the opinion of DA Legal recommended to register the case. Sd/- Pritam Singh Inspector Incharge:-Economic Offences Wing(C) 27.2.12. The above complaint was sent to Hon'ble SSP Sahib, Deputy Superintendent of Police who agreeing with the report of the Investigation Officer and after obtaining the opinion of DA Legal recommended to register the case. The Hon'ble SSP Sahib sent the above complaint to Superintendent of Police who sent to Superintendent Police Local who after taking the opinion of Investigating Officer and DSP(D) and expressing his agreement sent to Hon'ble SSP Sahib. Who sent the above complaint along with inquiry report to DDA Legal for opinion

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whose opinion is like this. No.1597 DDA Legal dated 17.12.13. Subject-Complaint No. 1283 peshi/SSP/SAS Nagar dated 1.9.11 and 1446 peshi dated 29.9.12. Complaint from Iqbal Singh S/o Karnail Singh R/o Village Rajindergarh, Tehsil and District Fatehgarh Sahib. Sir, I have examined the complaint of the complainant, documents placed on the file, statements of the witnesses and the report of the Investigating Officer. In my opinion, prima-facie, offence under Section 406, 420, 120-B IPC is made out against the second parties Sohan Singh, his wife Harinder Kaur and Mohinder Singh. Sd/- DDA Legal, SAS Nagar. On which Hon'ble SSP Sahib ordered to SHO, City Kharar to register the case and investigate Sd/- SSP SAS Nagar. After receiving FIR registered for the above offences against above persons and copy of the FIR is forwarded to Ilacqua Magistrate and Higher Officers through Dak. The Control Room SAS Nagar and Circle DSP, Kharar were informed on telephone. The FIR file alongwith complaint is being sent to ASI Harpal Singh for investigation. The MHC is directed to complete the record."

3. The learned counsel for the petitioner contends that a civil dispute between the complainant and Sohan Singh had been given the colour of a criminal case by the investigating agency. The complainant was well within his right to file a suit for specific performance which he deliberately did not file and instead got registered the instant FIR being a retired police officer himself. Be that as it may, as the petitioner was a first-time offender, in custody since 08.12.2023 and none of the 11 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be

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concluded anytime soon and therefore, he was entitled to the concession of bail, moreso, when the case was triable by the Court of a Magistrate.

4. The learned counsel for the State, on the other hand, contends that a perusal of the FIR would *prima facie* establish that the offence as alleged was indeed committed. Further, the FIR pertains to the year 2014 but the petitioner was arrested only in December 2023. Therefore, he was not entitled to the concession of bail. He, however, concedes that the petitioner was a first-time offender, in custody since 08.12.2023, none of the 11 prosecution witnesses had been examined so far and that the case was triable by the Court of a Magistrate.

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

6. This Court in the case titled as ***Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab bearing CRM-M24033-2021(O&M) Decided on 31.08.2022*** has held as under:-

“Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts) , in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant.”

7. The veracity of the prosecution case against the petitioner and his co-accused shall be adjudicated during the course of the Trial.

Admittedly, the petitioner is a first-time offender, is in custody since

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far. Therefore, the Trial in the present case is not likely to be concluded anytime soon. Even otherwise, the present case is triable by the Court of a Magistrate and no serious apprehension has been expressed by the State that the petitioner would abscond from justice, tamper with the evidence or influence witnesses if granted the concession of bail. Therefore, in this situation, the further incarceration of the petitioner is not required.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Mohinder Singh is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The present petition stands disposed of.

April 23, 2024
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

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