

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

CRM-M-17804-2024**Date of Decision:10.04.2024**

Nirmala Kataria

...Petitioner

Vs.

State of Haryana and Others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Anil Kumar Lamdharia, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 439(2) read with Section 482 Cr. P.C with a prayer to set aside the impugned order dated 15.03.2024 passed by the Court of Additional Sessions Judge, Kurukshetra, whereby the concession of anticipatory bail has been allowed to the respondents No.2 and 3.

2. The FIR in the present case was registered on the basis of the complaint filed by the present petitioner and the same has been reproduced below:-

“Copy complaint no. 132 Peshi dated 19.01.2024 Jail – To, Sir, Superintendent of Police, Kurukshetra. Subject:- To take action regarding fraudulently selling of the house of the jailed couple in HUDA Sector-2 and embezzlement of money. Respected Sir, It is submitted that the applicant Nirmala Kataria, wife of Mr. Surajbhan Kataria, is a resident of house no 1895, Sector-8, Kurukshetra. That the applicant is a housewife. That the applicant

needed a house for her family, in this regard, she contacted Sandeep Gaba who is a resident of village Jhansa, District Kurukshetra. As he is a broker, then he contacted Amarjeet, son of Mr. Kashmiri Sharma, resident of village Daulatpur, Tehsil Thanesar, District Kurukshetra, through which he took us to the house number 362 (whose area is 276 sq mt), which was locked and it was shown from outside and told that the owner of this house, Mrs. Karmjit Kaur and her husband Sukhwinder Singh was living in Punjab and wanted to sell their house. He introduced a person namely Sardar Rajendra Singh s/o Nepal Singh and told that he was the real brother of the landlady Karmjeet Kaur. He showed us the registry of the house and the photocopy of the allotment by Urban Estate Kurukshetra etc and the Aadhaar card of Mrs. Karmjeet Kaur No. 4096 6450 2540 and also showed the photocopy, after that I showed documents of the above said house to our family friend Mr. Ramkumar Rahul, Suvidha Property (Sector-7 Chowk) Kurukshetra, retired officer of Forest Department Mr. Jagmal Chandel resident of Sector-5 Kurukshetra and Mr. Mahipal resident of village Amin, Tehsil Thanesar, District Kurukshetra. The deal of the above house was done with the accused persons Sardar Manjeet Tauthad, Sardar Rajendra Singh, Amarjeet and other persons and a woman, who claimed to be the landlady, Mrs Karmjeet Kaur. The total amount was fixed as Rs. 1.75 crores, and we gave Rs. 25,00,000/- (Rupees Twenty Five Lakhs) in cash and cheque worth Rs. 15,00,000/- (Rupees Fifteen Lakhs) in the name of Mrs. Karmjeet Kaur to the above accused and the above mentioned accused were asked to give possession of the house till 20th November 2023. That after this the above mentioned accused stopped picking up the calls of the applicant and Shri Ramkumar Rahul ji. The applicant kept visiting House No. 362 situated in Sector-2, which was found closed and the applicant got information from the neighbours that the applicant had been cheated by the above accused persons. The

real owner of this house is already lodged in Punjab jail in fraud cases, and due to non-payment of the loan taken from the bank on this house, proceedings are being taken to auction of this house. Somehow, through Shri Sandeep Gabaji, we came face to face with the above main culprits Amarjeet and Sardar Manjeet Tauthad and they accepted their mistake and started talking about returning the money. After a lot of pressure, on 19th December 2023, Sardar Manjeet Tauthad and his wife got prepared affidavit and Mrs. Navneet Kaur gave fake cheques of Rs. 20 lakh each of two different banks, which were not honoured by the bank. After this, the applicant fully realized that they had been defrauded by the culprits as part of a conspiracy, and the house of the jailed couple. situated in Kurukshetra Urban Estate Sector-2, had been fraudulently sold and money had been defrauded. Therefore, you are requested to provide me justice by taking the strictest legal action against the above mentioned culprits. Date:-13-01-2023 Place:- Kurukshetra. Sd/-Nirmala.

3. Learned counsel for the petitioner contends that both the respondents had colluded with other accused and the petitioner was cheated by them. He further contends that in fact, the respondents No.2 and 3 had also handed over the cheques to the complainant side. However, when cheques were deposited in the bank, the same were dishonoured. Learned counsel for the petitioner further contends that the respondents are habitual offenders and several FIRs have been ordered to be registered against them, prior to the registration of the present case. He further contends that even during the course of investigation, the petitioner had recognised Navneet Kaur, respondent as the same woman, who had introduced herself to them as Mrs. Karamjeet Kaur i.e.owner of the house. Thus, by falsely claiming to be owner of the house, the

respondent had cheated the present petitioner. Further, it was also argued that the respondents No.2 and 3 were involved in similar nature of FIR and were habitual offenders. Even after the grant of concession of anticipatory bail, they were constantly threatening the petitioner and asking her not to come forward in order to depose against her before the Trial Court. Even the condition of the bail has been violated by the respondents No.2 and 3 and bail of both the respondents is liable to be cancelled by this Court.

4. I have heard learned counsel for the petitioner and have gone through the averments made in the petition with his assistance.

5. In fact, while granting the concession of bail to respondents No.2 and 3, Additional Sessions Judge, Kurukshetra had noted the following contentions made on behalf of respondents No.2 and 3 and the same has been reproduced below:-

“It transpires that the accused-applicants have been booked under Sections 420 and 120-B IPC with the allegations that they, along with co-accused Karamjeet Kaur, had cheated the complainant of an amount of Rs.20 lacs received by latter as earnest money against the agreement to sell dated 14.10.2023. As per the prosecution case, the owner of the house in question was Smt. Karamjeet Kaur, who had obtained earnest money to the tune of Rs.40 lacs, ie. Rs.25 lacs in cash and Rs. 15 lacs by cheque, from the complainant Smt. Nirmala Kataria. The possession of the said house was to be given to the complainant on 20.11.2023 and the sale deed was to be executed on 29.01.2024 on payment of balance sale consideration. However, Smt. Karamjeet Kaur neither transferred the possession nor executed the sale deed in favour of the complainant. When she was confronted, the accused-applicants, being her relatives, handed over two cheques of Rs.20 lacs each to the complainant. It is an admitted fact that the said

cheques have not been presented to the bank till date.

During the course of arguments of the present bail application, learned counsel for the applicants submitted that they were not a party to the alleged agreement between the complainant and Smt. Karamjeet Kaur. Rather, they had only participated in a panchayat held to get the matter resolved between the parties to the agreement and they had handed over two cheques of Rs.20 lacs to the complainant in order to get the matter settled amicably. Learned counsel for the accused-applicants has submitted that if the complainant does not enforce the aforesaid agreement, they would pay the aforesaid amount of Rs.40 lacs to the complainant today itself. On the other hand, learned counsel for the complainant, assisting learned Public Prosecutor for the State, has refused to accept the aforesaid amount of Rs.40 lacs paid by the complainant to Smt. Karamjeet Kaur and insisted that the sale deed be executed as per the agreement dated 14.10.2023. Learned counsel for the accused-applicant has submitted that the sale deed is to be executed not by them but by Smt. Karamjeet Kaur who is owner of the property in question. He has further reiterated that the offence under Section 420 IPC is not made out against the accused-applicants as they were neither the parties nor witnesses to the agreement in question nor did they receive any amount from the complainant on behalf of Smt. Karamjeet Kaur. It has been submitted that even then the accused-applicants have offered to pay the amount of earnest money paid by the complainant to Smt. Karamjeet Kaur, but the said offer has been refused by the complainant for the reason best known to her.

6. I have considered the submissions made by learned counsel for the petitioner and find no substance in the same. Even while granting the concession of anticipatory bail to respondents No.2 and 3, the Court had rightly observed that the every breach of contract does not amount to an offence under

Section 406/120 of IPC and the complainant is under a legal obligation to show that the fraudulent or dishonest intention was there right at the beginning of the transaction. Moreover, there is a growing trend of converting the civil disputes into criminal cases. In the instant case also, the main accused Karamjit Kaur had already joined the investigation in the present case. Moreover, no notice under Section 41 Cr.P.C was ever served on the respondents No.2 and 3. Still further, both the respondents had also joined the investigation and the documentary evidence had already been collected by the police in the present case. Even otherwise, the entire case was based on the documentary evidence, which had already been collected by the police during the course of investigation. Thus, no purpose would be served by sending the respondents No.2 and 3 to behind the bars, at this stage.

7. Still further, the Hon'ble Supreme Court has held in the matter of **M. Dharmarajam and others Vs.State of Telangana and Anr.**, 2020(1) RCR Criminal, 540 as follows:-

6.The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

7.In Raghubir Singh Vs. State of Bihar, (1986) 4 SCC 481

this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

8.It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

8. In the present case also, while extending the benefit of bail to the respondents No.2 and 3, the Additional Sessions Judge, Kurukshetra has recorded detailed findings and the concession of anticipatory bail has been granted to respondents No.2 and 3. Apart from that, respondents No.2 and 3 have already joined the investigation and the documentary evidence has already been taken into possession by the police. Even otherwise, the law is well settled that the order of cancellation of bail is a very harsh order, as it interferes with the liberty of individuals and such orders should not be interfered with. Even otherwise, the impugned order does not suffer from any illegality, perversity or

material irregularity and is liable to upheld by this Court.

9. Consequently, findings no merits in the present case, the present petition is ordered to be dismissed.

10.04.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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