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

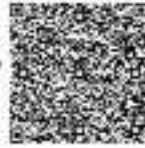
CRM-M-29713-2024**DATE OF DECISION: 12.06.2024****TARSEM MITTAL****...PETITIONER****Versus****STATE OF PUNJAB****... RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Ms. Deepika Chaudhary, Advocate for the petitioner(s).
Mr. J.S. Guru, AAG, Punjab.
Mr. Arjunveer Sharma, Advocate for the complainant.

*********SANDEEP MOUDGIL, J (ORAL)**

1. The jurisdiction of this Court has been invoked under Section 438 of Cr.P.C., for grant of anticipatory bail in case FIR No.0160 dated 04.05.2024 registered under Sections 406/420/120-B IPC at Police Station Zirakpur, District SAS Nagar.

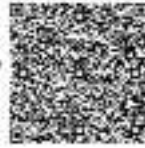
2. Learned counsel for the petitioner submits that the dispute in the present FIR is of civil nature wherein contractual obligation is alleged to have not been fulfilled as stipulated in the agreement to sell which was entered into between wife of the petitioner and the complainant regarding 4 Biswa land comprised in Khata No. 47/56, Khasra No. 560/462 (0-15), 561/462 (1-50), 562/462 (2-0), 563/464(2-0), 464(2-0), Kitas 5, at village Bishangarh. It is the case set up by counsel for the petitioner that under certain circumstances, the sale deed could not be executed which was extended for the said purpose from time to time after having received earnest money from the

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complainant for the first time on 19.10.2010 and thereafter, on 05.02.2011 i.e. Rs. 15 lakhs and 21 lakhs respectively. It is further asserted by counsel for the petitioner that on 13.01.2011, the said agreement was got cancelled and it was agreed between the parties that Rs. 14 lakhs was paid in cash and Rs. 7 lakhs through RTGS to the complainant out of Rs. 40 lakhs paid by the complainant. Thus, Rs. 21 lakhs stands returned back by the present petitioner on 13.01.2011 and one agreement to sell stands cancelled, therefore, the lodging of the FIR is solely abuse to process of law and for the amount pending, the petitioner has never denied to be repaid to the complainant.

3. Notice of motion.

4. Learned State Counsel appearing on advance notice, on behalf of respondent-State and on instructions has informed the Court that out of Rs. 40 lakhs, Rs. 26 lakhs has been repaid whereas another Rs. 14 lakhs is still pending which is to be returned by the petitioner to the complainant. It is on that account custodial interrogation has been sought. He has further argued that the petitioner is a habitual offender who is involved in other cases also i.e. FIR No. 270, dated 13.05.2022 U/s 174-A IPC, P.S. Fatehabad, Sadar City District Fatehabad, FIR No. 170 dated 21.08.2017 U/s 406, 420 r/w 120-B, P.S. Sector-26 (East) Chandigarh and FIR No. 208, dated 25.05.2021 U/s 420, 308, 120-b, 269, 270, 188, 468, 471, 201, 109, 110 IPC P.S. Chandimandir, District Panchkula and property involved in one of the FIR No.170 dated 21.08.2017, is the same which is involved in the present FIR.



5. I have given thoughtful consideration to the assertions made by counsel for the petitioner that he has been declared proclaimed offender in an FIR under Section 174-A IPC registered at P.S. Fatehabad, Sadar City, District Fatehabad was registered in a case under Section 138 of Negotiable Instrument Act, 1881 as well as other FIRs pointed out by learned State Counsel and counsel for the complainant who seeks custody to interrogate on modus operandi of the petitioner having duped the complainant for an amount of Rs.40 lakhs.

6. This Court cannot ignore that the learned counsel for the complainant could not deny the fact that he has already received Rs. 26 lakhs back from the petitioner out of total amount of Rs. 40 lakhs paid by him under an agreement to sell dated 19.10.2010 and also the fact that there is no denial of cancellation of agreement to sell. It cannot be prima facie observed or concluded at this stage that offence under Section 406/420 IPC is made out wherein the deceitful intention is to be seen at the very time of entering into the agreement to sell which took place in the year 2010.

7. Further, the bona fide of the petitioner is also to be seen at the same time as he has repaid Rs. 26 lakhs to the complainant and is not in denial mode to repay the balance amount of Rs. 14 lakhs at all. Even otherwise the nature and the assertions of the allegations made in the FIR would clearly depict that it is a purely civil dispute between the



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parties since the ingredients of deceitful intention is missing which was required to be established at the time when the agreement to sell took place in 2010.

8. After having heard learned counsel for the parties, this Court finds no reason to deny the petitioner the concession of bail if the petitioner has bona fide intentions and is willing to join the investigation and cooperate for furtherance of the same so that the final report can be submitted by the Investigating Agency in time.

9. Hence, in view of the admitted set of circumstances before this Court, the petitioner is directed to be released on anticipatory bail subject to his joining investigation and reporting to the Investigating Officer concerned within a period of one week from today, on furnishing of personal/surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioner shall also abide by the terms and conditions as envisaged under Section 438(2) of Cr.P.C.

10. However, it is made clear that in case the petitioner does not comply with the aforesaid direction of joining the investigation within one week, the order passed by this Court today shall automatically stands cancelled.

11. It is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

12. The petition in the aforesaid terms stands disposed off.

(SANDEEP MOUDGIL)
JUDGE

12.06.2024

anuradha

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*