



CRM-M-34424-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.205

Case No. : CRM-M-34424-2023

Date of Decision : August 21, 2024

Ashwani Kumar @ Ashwani Narang Petitioner

vs.

State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Yagsimant Attri, Advocate
for the petitioner.Mr. Karan Sharma, DAG, Haryana
for respondent no.1 - State of Haryana.

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GURBIR SINGH, J. :

1. Through the present petition, the petitioner seeks anticipatory bail in FIR No.0444 dated 05.11.2022, under Sections 406, 420, 120-B IPC and all other subsequently added Sections, if any, registered at Police Station Cheeka, District Kaithal.

2. A bare perusal of the case record shows that on 21.05.2024, on the request of learned counsel for the complainant, the matter was sent to Mediation and Conciliation Centre of this Court for amicable settlement between the parties. As per report of the Mediator, the parties are willing to settle the dispute amicably. So, the file has been sent back with a request for extension of time. However, learned counsel for the complainant is not present to assist the Court. Learned counsel for the petitioner, on pointed

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query, has also submitted that the matter cannot be settled by way of mediation. I am proceeding to hear this petition on merits.

3. As per prosecution version, FIR in question was registered at the instance of complainant namely Rajesh Kumar against the petitioner and his mother Kailash Rani. The allegations, in brief, are that vide agreement to sell dated 07.10.2021, Kailash Rani agreed to sell 05 marlas 02 sarsai of land to the complainant for consideration of Rs.74,00,000/-, out of which Rs.6,52,000/- and Rs.5,00,000/- were paid by way of cheques and remaining amount of Rs.61,48,000/- was paid in cash. So, Kailash Rani received Rs.73,00,000/- out of agreed sum of Rs.74,00,000/- and handed over physical possession of the land in question to the complainant, who raised construction thereon being its owner. The date for registration of sale deed was fixed as 30.05.2022. Thereafter, the petitioner and his mother sold the land in question measuring 05 marlas 02 sarsai to some other person vide registered sale deed dated 30.05.2022 by illegal means. In this way, petitioner and his mother misappropriated the amount received from the complainant as they had dishonest intention to grab complainant's money since the very beginning.

4. Learned counsel for the petitioner has argued that the allegation against the petitioner is that he connived with his mother Kailash Rani. Petitioner was neither signatory to the agreement nor received any amount. The dispute, if any, is of civil in nature. A Civil Suit for permanent as well as mandatory injunction (Annexure P-6) has already been filed against the complainant and his brother, in which the learned Trial Court had restrained



them from raising any further construction over the suit land till the decision of the case.

5. Learned counsel for the petitioner has further argued that the date for registration of sale deed was fixed as 30.05.2022 but before the said date i.e. on 26.05.2022, Suresh Kumar – brother of complainant Rajesh Kumar called the petitioner and informed him that they had sold the property to someone else and therefore, sale deed would be executed in favour of third party. This conversation was duly recorded by the petitioner. Again, on 27.05.2022, the petitioner himself contacted aforesaid Suresh Kumar, who again told the petitioner that the sale deed be executed in the name of third party, who would transfer an amount of Rs.11,52,000/- in favour of the petitioner and his mother and the amount of Rs.11,52,000/-, already received by them through RTGS, be returned through cheque. It was again decided that the sale deed would be executed on 30.05.2022. This second conversation was also recorded by the petitioner, which recording has been annexed with the present petition as Annexure P-4. The entire case is based on documentary evidence. The mother of the petitioner has already been granted concession of anticipatory bail by learned Additional Sessions Judge, Kaithal. So, the case of the petitioner be also considered at par and he be also granted the same relief.

6. Learned State counsel, countering the arguments advanced by learned counsel for the petitioner, has submitted that fraud of huge amount of Rs.73,00,000/- has been committed. It has further been argued that the authenticity of the conversations, placed on record as Annexure P-4, are yet

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to be established. However, he has fairly admitted that the petitioner has joined investigation. His mother Kailash Rani has already been granted anticipatory bail on 10.08.2023 by the learned Additional Sessions Judge, Kaithal. The investigation is at the initial stage. So, granting concession of anticipatory bail to the petitioner at this stage may hamper the investigation. The custodial interrogation of the petitioner is necessary as the money received by the petitioner is yet to be recovered.

7. I have heard the rival submissions of learned counsel for the parties and have gone through the case file.

8. A bare perusal of the case record shows that on 21.05.2024, on the request of learned counsel for the complainant, the matter was sent to Mediation and Conciliation Centre of this Court for amicable settlement between the parties. As per report of the Mediator, the parties are willing to settle the dispute amicably. So, the file has been sent back with a request for extension of time. However, learned counsel for the complainant is not present to assist the Court. Learned counsel for the petitioner, on pointed query, has also submitted that the matter cannot be settled by way of mediation.

9. Coming to the merits, the case is mainly based on agreement to sell in question. There is also conversation between the petitioner and brother of the complainant for executing sale deed in favour of third party. Although authenticity of said conversation is yet to be established but the main accused – Kailash Rani has already been granted anticipatory bail by the Court of learned Additional Sessions Judge, Kaithal. She has also joined

investigation. Recovery of money cannot be effected under the fear of custodial interrogation. A Criminal Court is not recovery agent. So, this Court is of the view that the custodial interrogation of the petitioner is not required.

10. In view of the above, the present petition is allowed and interim order dated 19.07.2023, vide which the petitioner was directed to join investigation, is hereby made absolute, subject to the conditions laid down in Section 438(2) Cr.P.C.

11. However, nothing observed herein above shall be construed to be an expression of opinion on the merits of the case. The observations recorded above are only for the purpose of deciding the present bail petition.

12. Pending applications, if any, shall stand disposed of along with this judgment.

August 21, 2024

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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.