



CRM-M-38373-2024

-1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
279 CRM-M-38373-2024
Date of decision: 17th September, 2024

Baljinder Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. J.S. Dadwal, Advocate for the petitioner.

Mr. A.S. Samra, AAG, Punjab.

Mr. Karambir Singh, Advocate for the complainant.

MANISHA BATRA, J (ORAL):-

The present petition has been filed by the petitioner under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking grant of anticipatory bail in case bearing FIR No. 160 dated 17.06.2024 registered under Sections 420, 120-B of IPC, 1860 at Police Station Sahnewal, District Ludhiana.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a complaint lodged by the complainant Ranjot Singh Samra through his special power of attorney holder Sham Sunder Monga, alleging therein that the present petitioner who was owner in possession of a constructed shop measuring 75 sq. yards had entered into an agreement to sell the said shop to



the complainant for a sale consideration price of Rs. 70,00,0000/- . A written agreement was executed on 02.12.2022. An amount of Rs. 17,00,000/- was given to the petitioner as earnest money at the time of execution of the agreement. The sale deed was agreed to be executed as on 05.06.2023. The complainant paid a sum of Rs. 11,00,000/- to the petitioner on 03.03.2023 and 24.03.2023 respectively. After receiving amount of Rs. 28,00,000/-, the petitioner extended the date for execution of sale deed by three weeks on the ground that No Objection Certificate (for short 'NOC') was to be received. It was also agreed that if she did not receive the NOC within three months, then she would be liable to repay the entire amount along with interest. The complainant alleged that he remained ready and willing to perform his part of the agreement along with balance sale consideration and stamp charges etc. but initially the petitioner postponed the matter due to non-availability of NOC and non completion of some documents of title, but then instead of performing her part of the agreement, she transferred the property which was the subject matter of the agreement between them to her relatives by getting a sale deed registered on 08.11.2023. The complainant by alleging that he had been cheated by the petitioner, prayed for taking action against her. After registration of FIR, investigation proceedings have been initiated and are underway. Apprehending her arrest, the petitioner had moved an application for grant of pre-arrest bail before the learned Additional Sessions Judge, Ludhiana which was dismissed vide order dated 26.07.2024.

3. It is argued by learned counsel for the petitioner that she has been falsely implicated in this case. She had entered into an agreement to



CRM-M-38373-2024

-3-

sell a shop to the complainant. It was the complainant who failed to abide by the terms and conditions of the written agreement as even after NOC had been obtained by the petitioner from the concerned authority, he did not turn up for getting the sale deed executed in his favour by making payment of balance sale consideration amount and thereby compelled the petitioner to execute sale deed in favour of some other persons. She had even filed a suit against the complainant seeking declaration to the effect that the agreement to sell as executed between them on 02.12.2022 was cancelled on account of default committed by the complainant, though the said suit had been subsequently withdrawn by her. She never intended to cheat the complainant. The ingredients for commission of offence of cheating had not been made out against her. Infact, the dispute between the parties was purely of civil nature and the complainant tried to give it a color of criminality. She is ready to join the investigation. Her custodial interrogation is not required. No recovery is to be effected from her due to committing default in compliance of terms and conditions of the agreement and the earnest money as given by complainant to her stands forfeited. With these broad submissions, it is urged that the petition deserves to be allowed. To fortify his arguments, learned counsel for the petitioner has placed reliance upon authorities '**CRM-M-35421-2022** titled as '**Raj Kumari vs. State of Haryana**' decided on **05.09.2022**, '**Satbir Singh vs. State of Punjab, 2024 NCPHHC 8002**' and judgment of Hon'ble Supreme Court '**Arnesh Kumar vs. State of Bihar and another, 2014(3) RCR (Criminal) 527**'.

4. On the other hand, learned counsel for the respondent No.2-

**CRM-M-38373-2024****-4-**

complainant has placed on record copy of receipt dated 24.03.2023 shown to be executed by the petitioner qua receipt of an amount of Rs. 28,00,000/- as earnest money amount. Its vernacular has also been annexed with the report which shows that it was also endorsed by the petitioner that as she had failed to provide NOC, therefore, the date of executing sale deed was extended till the receipt of NOC plus three weeks and if the NOC was not provided within three months, then she would be liable to refund the amount with interest to the petitioner. Annexure R-2/2 is copy of legal notice sent by learned counsel for the complainant to learned counsel for the petitioner.

5. Learned State counsel assisted by learned counsel for the complainant has submitted that the petitioner with an intention to cheat the complainant since the very beginning had entered into an agreement to sell her shop measuring 75 sq. yards to him and received an amount of Rs. 28,00,000/- as earnest money. She never provided any NOC issued by the competent authority to the complainant. The NOC was got issued by her was with regard to the residential property and not qua the shop in question. All this showed that since the very beginning the petitioner had malafide intentions. The allegations against the petitioner are serious in nature as she has caused wrongful loss to the tune of Rs. 28,00,000/- to the complainant. Her custodial interrogation is required for proper investigation of the matter by the police as well as for effecting recovery of the earnest money amount. Therefore, it is urged that the petition does not deserve to be allowed.

6. I have heard learned counsel for the parties and have gone through the record carefully.



7. It is not in dispute between the petitioner and the complainant that the petitioner had executed an agreement to sell a shop measuring 75 sq. yards for a sum of Rs. 70,00,000/- in favour of the complainant by executing a written agreement and had received an amount of Rs. 28,00,000/- from the complainant. As alleged by the complainant, despite agreeing to execute sale deed in his favour after obtaining NOC from the concerned government authority in respect of the shop in question, the petitioner did not obtain any such NOC and the said NOC was procured with regard to the some residential property belonging to the petitioner. It has been asserted that the petitioner had induced the complainant to part with the amount of Rs. 28,00,000/- by making a false representation and with an intention to cause wrongful loss to him as no NOC was obtained specifically with regard to shop in question which showed the intention of the petitioner to cheat the complainant not only this she had sold the disputed shop to some of her relatives which showed her dishonest intention. The custodial interrogation of the petitioner is sought for the purpose of recovery of amount of Rs. 28,00,000/-.

8. Though the case as set up by the petitioner is that an NOC with regard to the shop in question had been obtained and it was the complainant who failed to get sale deed executed by making payment of balance sale consideration amount within the stipulated period, however, learned counsel for the petitioner has placed on record a photocopy of NOC which is shown to be issued in favour of the petitioner with regard to the some residential property and not shop. As such, it is a debatable question as to whether the



petitioner was actually ready to perform her part of the agreement or not?

For the purpose of the present petition whereby the prayer has been made by the petitioner for extending him benefit of pre-arrest bail, it may be stated that the well settled proposition of law is that while dealing with the anticipatory bail petitions, the courts have to consider the gravity of the offence and need for a fair and proper investigation. The instant case is based on documentary evidence. The subject offences are triable by Magistrate. It is well settled proposition that the jurisdiction of criminal Court cannot be invoked for realisation of dues of the complainant without trial and also that the criminal courts while exercising jurisdiction to grant anticipatory bail, are not expected to act as a recovery agents to realise the dues of the complainant, that too without any trial. Reference in this regard can be made to ***Dilip Singh Vs. State of Madhya Pradesh and another, 2021 (1) RCR (Criminal) 585*** and the order dated 19.03.2021 passed by Hon'ble Supreme Court in Special Leave to appeal (criminal) No. 1274 of 2021 title as '***Manoj Kumar Sood and another Vs. State of Jharkhand, special leave to appeal (crl.) No. 1274 of 2021***', decided on ***19.03.2021***', wherein it was observed so. Reference can also be made to order dated 16.01.2023 passed in '***Bimla Tiwari Vs. State of Bihar and others, Special Leave Petition (Criminal) Nos. 834-835 of 2023***' wherein Supreme Court observed that the criminal law process, especially while deciding the application for bail should not be used for recovery of money and rather should be just upon merits of the case. In ***Satbir Singh's case (supra)*** which has been relied upon by learned counsel for the petitioner also, the accused



had been booked for commission of offences under Sections 406, 420 and 120-B of IPC. It was argued that his custodial interrogation is required to find and trace out as to where, the swindled money had disappeared especially since the money had not even been returned to the complainant. It was observed that the custodial interrogation of the petitioner could not be ordered for that purpose. Keeping in view the directions issued by Hon'ble Supreme Court in *Satinder Kumar Antil Vs. Central Bureau of Investigation passed in Special Leave to Appeal No. 1591 of 2021*, it was observed that custodial interrogation of the petitioner was not required and he was granted benefit of pre-arrest bail. In *Raj Kumari's case (supra)*, the petitioner prayed for grant of anticipatory bail in a case registered under Sections 406 and 420 of IPC against her. It was observed that the arrest of accused was not required under the provisions of sub-section (1) of Section 41 of Cr.P.C. In view of the guidelines issued by Hon'ble Supreme Court in *Arnesh Kumar's case (supra)*, the prayer made by the petitioner was allowed by observing that the allegations against the petitioner were based on documentary evidence and it was appropriate to direct them to appear before the investigating officer to join investigation.

9. The instant one is also a case which is primarily based upon documentary evidence. The custodial interrogation of the petitioner is not required for that purpose. Then so far as the recovery of amount of Rs. 28,00,000/- which was given by the complainant as earnest money to her, in view of the position of law as discussed above, the Court while deciding petition for pre-arrest bail cannot act as a recovery agent and further keeping



CRM-M-38373-2024

-8-

in view the fact that the subject offence is triable by Magistrate, punishable with a maximum sentence of seven years, I am of the considered opinion that the petition deserves to be allowed. Hence, the same is allowed and the petitioner is ordered to be admitted to pre-arrest bail subject to her surrendering before the Investigating Officer/ Arresting Officer within a period of one week and furnish personal as well as surety bonds and further subject to her joining investigation as and when required thereafter and also on compliance of the conditions as enumerated in Section 482(2) of Bharatiya Nagarik Suraksha Sanhita (for short 'BNSS').

10. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

11. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

17th September, 2024

Parveen Sharma

1. Whether speaking/ reasoned

: Yes / No

2. Whether reportable

: Yes / No