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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.39269 of 2024
Date of decision: 03.10.2024

Vikas Sharma ... Petitioner

Vs.

The State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Bimal Maini, Advocate,
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab,
for the respondent-State.

Mr. Brijender Kaushik, Advocate,
for the complainant.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (For short “BNSS”) seeking anticipatory bail in case arising out of FIR No.241 dated 30.06.2024 registered under Sections 406, 420, 465, 467, 471 and 120-B of IPC at Police Station City Kharar, District SAS Nagar.
2. The adumbrated facts emanating from the record are that the aforementioned FIR has been registered on the basis of written complaint lodged by the complainant Simi Chauhan alleging therein that in August 2023, the co-accused Shiv Kumar Sharma got issued an advertisement on

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social media platform qua his project Ekam Heights situated at Randhawa Road, Kharar. On noticing the advertisement, the complainant went to his office and had met the petitioner who introduced her to co-accused Shiv Kumar and his wife Neha Sharma both of whom worked as property dealers. They arranged a meeting between the complainant and co-accused Sukhwinder Singh @ Sukha owner of project Ekam Heights. The co-accused Sukhwinder represented to the complainant that the petitioner, accused Shiv Kumar Sharma and his wife had sold more than 200 flats of his project and on being induced by them, she booked an apartment in the project by making payment of booking amount of Rs.21,000/- on 29.08.2023. An agreement to sell was executed by the accused Sukhwinder Singh @ Sukha qua apartment No.30 for a sum of Rs.25 lakhs on 02.09.2023. The complainant paid a sum of Rs.10 lakhs as earnest money to the accused Shiv Kumar through cash as well as through cheque.

3. As per the further allegations, the accused subsequently induced the complainant to purchase another apartment bearing No.28 in the same tower and the accused Sukhwinder Singh quoted its price as Rs.26,50,000/-. The complainant agreed to the same and paid a sum of Rs.5 lakhs as earnest money to the co-accused Shiv Kumar through RTGS on 18.09.2023. In this manner, the complainant paid a sum of Rs.15 lakhs to accused Shiv Kumar. Two agreements dated 02.09.2023 and 18.09.2023 were executed. However, no sale deed qua the

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aforementioned apartments was registered in favour of the complainant despite her insistence and subsequently she came to know that the accused in connivance with each other had sold both these apartments to some other person thereby duping her of an amount of Rs.15 lakhs. After registration of FIR, investigation proceedings have been initiated and are underway. Apprehending his arrest, the petitioner had moved an application for grant of pre arrest bail. It is apparent from the reply filed by the State that the petitioner was initially directed to join the investigation and he along with the co-accused agreed to return the amount of Rs.15 lakhs to the complainant but subsequently backed out due to which the applications filed by the petitioner and co-accused for anticipatory bail were dismissed.

4. It is argued by learned counsel for the petitioner that he is an employee of Shiv Kumar Sharma, proprietor of Rehaas properties and working as Branch Manager therein. He is neither beneficiary of the agreement executed between the complainant and the co-accused nor he had induced the complainant in any manner whatsoever to purchase apartments in Ekam Heights project. It is submitted by him that even his own salary for the last two months has not been paid. His job profile was only to show flats to the customers and the deals were finalized by the co-accused Shiv Kumar Sharma who is Managing Director of the project. He never received any amount of money from the complainant. No recovery is to be effected from him. He is ready to join the investigation.

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His custodial interrogation is not required. Therefore, it is urged that the petition deserves to be allowed.

5. Status report has been filed by the respondent-State. It is submitted therein and learned State counsel assisted by learned counsel for the complainant has argued that the petitioner and co-accused entered into a criminal conspiracy and in pursuance of the same, the complainant was induced to purchase two apartments in Ekam Heights project and paid an amount of Rs.15 lakhs to the co-accused. No sale deed was registered in her favour rather it was disclosed to her subsequently that sale deed qua those apartments executed in favour of some other person. The co-accused Shiv Kumar is associated with the inquiry. It is revealed that Sukhwinder Singh was not aware of any deal made by Shiv Kumar with the complainant and did not sign any agreement in favour of the complainant. Rather it has been revealed that the signatures of Sukhwinder Singh have been forged on the documents with an intent to defraud and deceive the complainant. The petitioner along with the co-accused is ready to return the amount of Rs.15 lakhs before the Court of learned Additional Sessions Judge during pendency of the anticipatory bail application but had backed out subsequently. His custodial interrogation is required to find out the exact role played by him and also to know as to whether the signatures on the agreements in question were forged by him in connivance with the co-accused or not. Therefore, it is argued that the petitioner does not deserve to be extended benefit of

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anticipatory bail.

6. I have heard learned counsel for the parties at considerable length and have gone through the record.

7. The petitioner along with the co-accused is alleged to have hatched a conspiracy and in pursuance thereof, the complainant was induced to enter into two agreements to purchase apartments in Ekam Project. No doubt, in the FIR, there is no specific allegation qua the petitioner receiving any money or making any specific inducement. However, as per the status report, the signatures on the agreements are not shown to have been appended by the actual owner Sukhwinder Singh @ Sukha who too has been nominated as accused but rather the same have been forged. For conducting thorough investigation in the matter by the police, the custodial interrogation of the petitioner as such is required. More so, the same is required for the purpose of ascertaining as to whether he played any role in forging signatures of Sukhwinder Singh on the agreements and was behind the conspiracy hatched by the co-accused to dupe the complainant of huge sum of money. It is well settled proposition of law that the custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order of anticipatory bail. The custodial interrogation of the petitioner is necessary for excavating the truth, ascertaining the role of the petitioner as well as other co-accused. Taking note of gravity and nature of the offence, the petitioner is not

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entitled for concession of anticipatory bail. No extraordinary or exceptional circumstance has been made out entitling him to seek concession of pre arrest bail as a matter of right. The power for grant of pre arrest bail is an extraordinary power. This privilege should be granted only in exceptional cases. The judicial discretion conferred upon the Court has to be properly exercised after application of mind as to the nature and gravity of the accusation, possibility of applicant’s fleeing from justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence the Court must be circumspect while exercising such power for grant of anticipatory bail. The Court has also to see that an order of anticipatory bail should not operate as inroad in the normal legal procedure of criminal cases by the trial Court. As such, I am of the considered opinion that the petition does not deserve to be allowed. Accordingly, the same is dismissed.

03.10.2024
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(MANISHA BATRA)
JUDGE

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