

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42049-2024 (O&M)

Date of Decision: 29.08.2024

Neeraj Bansal

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajesh Sharma, Advocate for the petitioner

Mr. JS Rattu, DAG Punjab

Sandeep Moudgil, J.

Relief

(1). This petition under Sections 483 (3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed by the petitioner-complainant seeking cancellation of the anticipatory bail granted to the respondent No.2/accused in case FIR No.66 dated 12.03.2024 under Sections 406/420 IPC registered at Police Station Zirakpur, SAS Nagar.

(2). Facts as culminated from the FIR is reproduced as under:-

"To Respected Superintendent of Police, Mohali. Subject Complaint against Jatinder Singh Son Of Rachhpal Singh resident flat no. 704, 7" floor Tower no. A. Victoria Hights, Peermushalla Teh: Derabassi regarding flat no. 704, 7th floor Tower no. A, Victoria Hights Peermushalla; Teh: Derabassi did not get flat registered after sale agreement and getting the dates extended further and then. stop picking telephone application for taking may the appropriate action be taken for committing fraud. Sir. Humbly it is requested that on the subject referred above the seller the agreement was entered in the name my and in the name of my wife Payal and copy of the same is attached herewith. That after entering above Agreement for flat sum of Rs.11,30,000/- was paid whose detail is given in the agreement. That

registration of flat was fixed on 30/08/2023 but with mutual consent of both the sides it was extended for 30/09/2023, then 31/10/2023 and then for 20/11/2023. for which it is entered in the agreement. That we presented ourselves in the office of Sub-Registrar Zirakhpur, but seller did not make himself present nor gave any message, we got our attendance marked and copy of affidavit is attached herewith. That in this regard seller was contacted on phone but he started saying not today but on tomorrow but did not reply. That in this regard dealer was contacted and he phoned the seller but again seller did not pickup phone. That instead of getting flat registered a notice dated 23/11/2023 was issued through advocate whose copy is attached herewith. That the notice is about the not executing registry and about not making balance payment further extension of time which is wrong rather time was extended on the request of seller whereas we had already purchased stamp papers which we are bound to produce at the time of investigation, it is requested that we had purchased stamp papers and were prepared to get property registered and balance payment shall be made at the time of registry. It is therefore requested that seller has committed fraud and legal action may be taken for not getting flat registered. Thanking you with regards. Sincerely yours Sd- Niraj, Niraj Bansal Son of Vijay Bansal, H. No. 5162, Ward No. 9 Baghapurana, dated 30.11.23..."

(3). The respondent-accused had filed CRM-M-28777-2024 and this court vide order dated 04.07.2024 granted the concession of anticipatory bail to him. Now the petitioner, who is the first informant against the respondent-accused, has approached this Court seeking an order from this Court to cancel the bail granted to the respondent-accused on the ground that he falsely stated that he has not entered into agreement to sell with Kamini Gupta. Reliance has been placed on agreement to sell dated 10.02.2023 vide which he sold residential flat No.704, Tower-A, Victoria Heights, Peemushalla, Zirakpur to Kamini Gupta which was again sold to the petitioner-complainant vide agreement dated 28.06.2023 (Annexure P5).

(4). Further, he contends that no compromise, as alleged by the respondent-accused, has been ever arrived at with Kamini Gupta and the complaint filed by her dated 30.01.2024 alleging cheating, fraud, criminal breach of trust and criminal intimidation is still pending before the SSP, Mohali. To this effect, learned counsel for the petitioner has placed on record affidavit of Kamini Gupta dated 18.07.2024 contradicting the stand of respondent-accused which formed one of the basis for claiming anticipatory bail to him.

(5). It is argued that the respondent-accused, at the time of entering into agreement to sell with the petitioner, had never revealed to him that the property in question was already mortgaged with the Punjab National Bank and the loan against that property is still outstanding, however, the process for direct transfer of balance towards the loan account of respondent-accused was initiated by the petitioner through his bank.

(6). Heard learned counsel for the petitioner.

(7). The Supreme Court has illustratively highlighted the grounds on the basis of which an order for cancellation is often granted which primarily deal with supervening events or events, which had happened after the grant of the bail. However, judicial pronouncements have broadened the horizons of the powers of the Courts under Section 439(2). It is now a settled proposition that cancellation of bail is an order, which interferes with the liberty of the individual and it must not be lightly resorted to. The grounds and criteria for rejecting the bail already granted are different and stand on a different footing.

(8). The Supreme Court in **Aslam Babalal Desai v. State of Maharashtra, (1992) 4 SCC 272** distinguished between a case of bailable and a

non-bailable offence as it is easier to reject a bail application in a non-bailable case than to cancel a bail once granted and since cancellation of bail interferes with the liberty already secured by the accused either on the exercise of discretion by the court or by the thrust of law, the power to take an accused back in custody who has been enlarged on bail has to be exercised with care and circumspection.

(9). It is not the case of the petitioner that the respondent-accused, after being enlarged by the concession of this court, either ever misused his liberty by indulging in similar criminal activity; or interfered with the course of investigation; or that he ever made an attempt to tamper with the evidence or coerce or threatened the witnesses hampering the smooth investigation. The averments made in the petition also do not show that there is any likelihood of respondent-accused fleeing to another country or becoming unavailable to the investigating agency. Furthermore, the grounds taken for cancellation of bail is more based on factual aspects than those illustrated by law and since questions involving facts needs to be scrutinized by the trial court, this Court sees no valid reason to cancel the bail granted to the respondent-accused vide order dated 04.07.2024.

(10). Dismissed.

29.08.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No