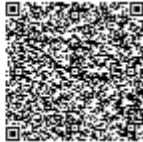


2025:PHHC:026332



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CRM M-6683 of 2025
Date of Decision: 05.02.2025

Dalip ...Petitioner
Versus
State of Haryana and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. D.P.S. Joura, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 483(3) of BNSS with a prayer to set aside the impugned order dated 27.12.2024 (Annexure P-2) passed by the Court of Additional Sessions Judge, Fatehabad, whereby, the concession of anticipatory bail has been allowed to respondent No. 2.
2. The FIR in the present case was registered on the basis of the statement made by petitioner Dalip and the same has been reproduced below:-

“To The S.P. Sahab, Fatehabad. Subject: Complaint for taking action against Sukhwinder Singh son of Balkar Singh son of Suryan Singh, resident of Bhuna Road, Tohana, District Fatehabad and for registering a case under sections 316, 318, 338, 336 (3), 340 of Bhartiya Nyaya Sanhita, Date of incident and agreement:

12.07.2024, Place: Tohana, Police Station City Tohana.

Sir, The makes the following prayers:

1. That the applicant, whose Aadhar No. is 6242 8257 1540, in a permanent resident of Tohana City.
2. That the accused Sukhwinder had entered into an agreement with me, the applicant on 12.07.2024 and on the agreement, he had received Rs.5,50,000/- from me, the applicant, out of which Rs.5,00,000/- was received through Bank cheque No.000001 HDFC Bank Branch Tohana and Rs.50,000/- in cash as advance from me, the applicant in the presence of witnesses Mahesh son of Bhagwan Das, resident Tohana and Kesho Ram son of Dhan Singh, resident of Tohana and the accused had said that he is owner in possession of & Plot Showroom No. 140 measuring 15'x74' comprised in Khasra No.289, Killa Nos. 14 and 15, which has a Rasta 50 feet wide on the south side and the street is closed on the north side, measuring 123.33 Square yard, which falls in Ekta Nagar Tohana, Tehsil Tohana, of which the accused is the owner and occupant as per the Jamabandi for the year 2021-22 and the total deal was fixed for Rs.23,00,000/- and the date of registration was fixed for 15.10.2024 and at the time of agreement, the accused showed the Jamabandi to me, the applicant, in which his name was not there and he said that he has purchased the land, Mutation No.27503 of which is registered in his name in the record, but he has not brought the copy of that mutation today. That 1, the applicant, believing the words of the accused that he is the owner and occupant of the above plot, had made an agreement on 12.07.2024 and the date of registration was fixed as 15.10.2024 and along with this, a condition was also written in the

agreement that if 1, the applicant Dalip, do not get the registration done on 15.10.2024, then my advance of Rs.5,50,000/- will be forfeited and if the accused Sukhwinder does not get the registration done in the name of me, the applicant Dalip or any other person on 15.10.2024, then he will be liable to return double of the aforesaid earnest money. That the applicant was present at the Tehsil office Tohana on 15.10.2024 from 9 am to 5 pm with the outstanding dues, stamp expenses and registration expenses, but the accused did not come to get the registration done. After that, I, the applicant, got my affidavit attested by the Tehsildar Tohana. That when the accused did not get the registration done in my favor, I got the Revenue Record i.e. Jamabandi for the year 2021-22 of the above mentioned land and got a copy of Mutation No.27503 on 16.10.2024. Then I came to know that the accused has no connection or concern with the above mentioned plot and there is no ownership record in his name. In this way, the accused, despite not being the owner or occupant of the land, has cheated me by collecting Rs.5,50,000/- from me on 12.07.2024. Therefore, I request you to register a case against the above accused and take legal action and get my advance amount back along with compensation and give him the harshest punishment. Your kindness will be appreciated. Date: Applicant Dilip, Dalip son of Shri Rajendra son of Fatori, resident of Tohana, Tehsil Tohana District Fatehabad, Mobile No.74019-30008”.

3. Learned counsel for the petitioner contends that in fact the respondent No. 2 had entered into an agreement to sell with the petitioner on 12.07.2024 and had received a sum of Rs. 5,50,000/-

from the petitioner on different occasions with malafide intention to cheat him and the respondent No. 2 was well aware of the fact that he was neither the owner nor was having the possession of the land. Learned counsel for the petitioner has also referred to the Jamabandi (Annexure P-3) for the year 2021-2022 to contend that the respondent No. 2 was not shown as the owner in the column of ownership. However, the Court of Additional Sessions Judge, Fatehabad wrongly granted the concession of anticipatory bail to respondent No. 2.

4. I have heard the learned counsel for the petitioner at length and perused the impugned order carefully. However, I find no substance in the argument raised by the learned counsel for the petitioner. In fact, it is evident from the record that vide agreement to sell dated 12.07.2024, the respondent No. 2/accused had agreed to sell the land measuring 123.33 square yards to the petitioner/complainant for a consideration of Rs. 23,00,000/- and had received a sum of Rs. 5,50,000/- lacs as earnest money. However, during the course of hearing, before Sessions Court, the respondent No. 2/accused also placed on record a copy of the agreement to sell dated 28.05.2024, vide which the respondent No. 2 had agreed to purchase the land measuring 12 Kanals 08 Marlas from Ajit Singh for a sum of Rs. 1 crore and the target date for execution of the sale deed was fixed to be 30.04.2025. Even, the respondent No. 2 had purchased the land from Ajit Singh vide sale deed dated 07.11.2024. The respondent No. 2 had also issued a legal notice dated 28.10.2024 calling upon the

petitioner/complainant to get the sale deed executed and registered, in terms of the agreement dated 12.07.2024 upto 13.11.2024. Thus, it has been noticed by the trial Court that respondent No. 2/accused was ready to execute the sale deed in favour of the petitioner. Even, during the course of hearing before the Additional Sessions Judge, the respondent No. 2 was ready to return the earnest money to the petitioner/complainant or in the alternative, he was also ready to perform his part of the contract, as per the agreement to sell dated 12.07.2024. Thus, the Additional Sessions Judge had correctly observed that there was no dishonest intention on the part of respondent No. 2 and the concession of anticipatory bail has been rightly granted to respondent No. 2.

5. Still further, the Hon'ble Supreme Court has held in the matter of ***M. Dharmarajam and others Vs.State of Telangana and Anr., 2020(1) RCR Criminal, 540*** as follows:-

“6.The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice etc. Each criminal case presents its own peculiar factual scenario, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is prima facie case against the accused.

For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the police and comment on the same.

*7. In **Raghubir Singh Vs. State of Bihar, (1986) 4 SCC 481** this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.*

8. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail”.

6. In the present case also, while granting the concession of anticipatory bail, the Additional Sessions Judge has recorded detailed findings and the discretionary relief has been correctly allowed by the

Court. The impugned order dated 27.12.2024 (Annexure P-2) passed by the Additional Sessions Judge, Fatehabad, does not suffer from any illegality or perversity and is liable to be upheld.

7. According, the petition is ordered to be dismissed.

05.02.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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