
(2021) 10 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 36484 Of 2021 (O&M)

Shinder Kaur @ Surinderpal Kaur And Another

APPELLANT

Vs

State Of Punjab And Another

RESPONDENT

Date of Decision : 13-10-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420

Code Of Criminal Procedure, 1973 — Section 438(2)

Citation : (2021) 10 P&H CK 0040

Hon'ble Judges : Gurvinder Singh Gill, J

Bench : Single Bench

Advocate : Lupil Gupta, Ajay Pal Singh Gill, Arjan Singh, Baljinder Singh Sra

Judgement

Gurvinder Singh Gill, J

1. The petitioners have approached this Court seeking grant of anticipatory bail in respect of a case registered vide FIR No.65 dated 28.7.2021 at Police Station Phool, District Bathinda under Sections 420 and 120-B of Indian Penal Code.

2. The FIR was lodged at the instance of Kashmiri Lal, wherein it is alleged that Shinder Kaur @ Surinderpal Kaur possesses land in her parental Village Jalal where the other accused used to visit her. It is alleged that Shinder Kaur @ Surinderpal Kaur in the presence of her son Jaswinder Singh and accused Gurjant entered into an agreement dated 23. 12.2020 (Annexure P-2) for sale of her land measuring 58 kanals 13 marlas to him @ Rs.15.40 lakhs per acre and received an amount of Rs.42 lakhs as earnest money. It is alleged that Shinder Kaur @ Surinderpal Kaur received another amount of Rs.16 lakhs from the complainant through RTGS on 22. 4.2021 and had thus received a total amount of Rs.58 lakhs. It was agreed that the sale deed would be executed by 30.4.2021. It was further agreed amongst the parties that one month prior to the date fixed for execution of sale deed, the complainant will pay an amount of Rs.16 lakhs and the petitioner would get the outstanding loan against the land cleared for the purpose of getting the sale deed executed. It is alleged that

despite having received the said amount, the petitioner did not get the sale deed registered and is not even returning double the amount of earnest money i.e. Rs.84 lakhs as had been agreed.

3. Learned counsel for the petitioners has submitted that even if all the allegations as levelled in the FIR are taken to be correct, still no criminal liability can be fastened upon the petitioners inasmuch as the complainant himself has not honoured all the conditions of the agreement dated 23.12.2020 (Annexure P-2) inasmuch there is a categoric recital in the said agreement that the purchaser is to pay an amount of Rs.16 lakhs one month prior to the date nominated for registration of the sale deed, whereas in the instant case the said amount of Rs.16 lakhs has been transferred to the bank account of the petitioner on 22.4.2021 though the same ought to have been transferred by 1.4.2021.

4. Opposing the petition, learned State counsel has submitted that since there are specific allegations levelled against the petitioner Shinder Kaur @ 2 of 4 (3) CRM-M-36484-2021 (O&M) Surinderpal Kaur, who admittedly has received an amount of Rs.58 lakhs and has not even got the sale deed executed, no case for grant of bail is made out.

5. Learned counsel representing the complainant has submitted that in the instant case the petitioner Shinder Kaur @ Surinderpal Kaur herself had sent the bank account details to the complainant through 'whatsapp' on 20.4.2021 so as to facilitate the transfer of amount of Rs.16 lakhs and that since 21.4.2021 happened to be a holiday, the amount could not be sent and that it was on the very next working day i.e. on 22.4.2021 (Monday) that the amount of Rs.16 lakhs was transmitted to the bank account of the petitioner and that in these circumstances it was expected of the petitioner Shinder Kaur @ Surinderpal Kaur to have duly honoured the terms and conditions of agreement dated 23.12.2020 (Annexure P-2). Learned counsel for the complainant has further submitted that, in any case, even as on date he is ready to pay the balance amount for the purpose of getting the sale deed executed, whereas the petitioner basically is trying to extort more amount from the complainant by asking for a hefty amount as sale consideration.

6. I have considered rival submissions addressed before this Court.

7. It apparently appears to be a case, where the agreement for sale of property has not been duly honoured by one of the party. Though the petitioner Shinder Kaur @ Surinderpal Kaur claims that it was on account of violation of one of the condition regarding payment of Rs.16 lakhs that the sale deed was not executed, but the said question would be rather debatable inasmuch as the transfer of said amount on 22.4.2021 is not disputed and the complainant has come out with an explanation that it was only on 20.4.2021 3 of 4 (4) CRM-M-36484-2021 (O&M) that the bank details were furnished by the petitioner Shinder Kaur @ Surinderpal Kaur to the complainant. In any case, it is not in dispute that while the complainant has already instituted a suit for specific performance against the

petitioner Shinder Kaur @ Surinderpal Kaur, even the petitioner Shinder Kaur @ Surinderpal Kaur has filed a civil suit seeking declaration to the effect that the agreement dated 23.12.2020 stands rescinded and wherein a prayer for forfeiture of the earnest amount and damages to the tune of Rs.15 lakhs has been made.

8. Having regard to the aforesaid facts and circumstances of the case particularly the fact that both the parties are also agitating the same matter in the Civil Court, this Court is of the opinion that the instant case is not such, where custodial interrogation is warranted as the petitioner Shinder Kaur @ Surinderpal Kaur, otherwise is not disputing the receipt of amount of Rs.58 lakhs. The petition, as such, is accepted and it is ordered that, in the event of arrest, the petitioners be released on bail subject to their furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall join investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall abide by the conditions as provided under Section 438(2) Cr.P.C.