

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-23057 of 2015

Date of decision : 27.07.2015

Bahal Singh and another

..... Petitioners

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Pawan Girdhar, Advocate for petitioners.

DARSHAN SINGH, J. (Oral)

This is the second petition under Section 438 of the Code of Criminal Procedure, 1973 (here-in-after called the Cr.P.C.) for grant of pre-arrest bail to the petitioners in case FIR No.86 dated 30.07.2013, under Sections 465, 467, 468, 471, 420 and 120-B of the Indian Penal Code, 1860, registered at Police Station City Jalalabad.

2. As per the prosecution allegations, the petitioners had tried to sell the land belonging to Provincial Government on the basis of false revenue record i.e. by tempering with the revenue record, to Paramjit Kaur and Rupinder Kaur. When the said sale deed was presented for registration before the Tehsildar-cum-Sub Registrar, Jalalabad, on the basis of suspicion, he called for the Jamabandies for the years 2004-2005, 1999-2000 and 2009-2010. On inspection of those documents, it was found that the ownership of the Khasra numbers in question were recorded in the name of the Provincial Government and in the column of

cultivation, there was cutting on the Khasra numbers. Mutation No.807 was also found to have been entered by committing the forgery, by way of making cuttings in the Register of the Patwari. In fact, it was found that no mutation No.807 was entered in the register of District Office nor was attached therewith. So, an effort was made to usurp government land and the accused had tampered with the record and got themselves recorded as owners in place of the Provincial Government.

3. Mr. Pawan Girdhar, Advocate, learned counsel for the petitioners contended that the first petition of the petitioner for pre-arrest bail was not decided on merits and was simply dismissed as withdrawn. So, the second petition for grant of anticipatory bail is maintainable. To support his contentions, he relied upon cases **Ramsewak & others Vs. State of M.P. 1979 Criminal Law Journal 1485 (MP) (DB)**, **Yuvraj Gaud Vs. State of M.P. & Anr. 2005 (1) RCR (Criminal) 618 (MP)**, **Twinkle Soni & Anr. Vs. State of Jharkhand 2011(6) RCR (Criminal) 2045(DB)** and **Babubhai Bachubhai Bhabhor Vs. State of Gujarat 2005 Criminal Law Journal 1618 (FB)**.

4. He further contended that now the investigation is already complete and the challan has been presented in the Court. He contended that presentation of the challan is also no ground to decline the bail and the pre-arrest bail can still be granted to the petitioners. To support his contentions, he relied upon cases **Bharat Chaudhary & Anr. Vs. State of Bihar & Anr. 2003(8) SCC 77**, **Court on its own motion Vs. Central Bureau of Investigation 2006(4) RCR (Criminal) 206 (Delhi)**,

Ravindra Saxena Vs. State of Rajasthan (2010) 1 SCC 684, Sajjan Kumar Vs. The State (Through CBI) 2010(2) RCR (Criminal) 317 (Delhi) and Sanjay Chandra Vs. CBI (2012) 1 SCC 40.

5. He further contended that with the presentation of challan now the petitioners have apprehension of their arrest by the Court when they will put in appearance before the Court. So, their petition for grant of anticipatory bail is quite maintainable. To support his contentions, he relied upon cases **Puran Singh Vs. Ajit Singh & Ors. 1984(2) RCR (Criminal) 532 (DB)** and **Gurdarshan Singh Vs. State of Punjab 2000(4) RCR (Criminal) 665.**

6. He further contended that the liberty of citizen is paramount. The relief of pre-arrest bail can be granted to safeguard the liberty, humiliation and disgrace attached to the arrest and detention of a person. To support his contentions, he has placed reliance upon cases **Gurbaksh Singh Sibia etc. Vs. The State of Punjab AIR 1980 SC 1632 (CB)** and **Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors. 2011(1) SCC 694.**

7. He further contended that in this case the petitioners are being falsely implicated. The petitioners have purchased the land in question on 13.12.2011 from Kashmir Chand and Wazir Chand. Who had further purchased it from Amrit Lal. He contended that the land in question adjoins the Indo-Pak boarder. The ownership of this land always remains with the Provincial Government. The entry regarding cultivation is entered in favour of the landlord. On the basis thereof, the

sale transactions are effected. He contended that no tempering with of revenue record was made by the petitioners, nor it was possible without the connivance of the revenue officer. He further contended that on the basis of a complaint moved by the vendees, an inquiry was conducted by the Sub Divisional Magistrate, Jalalabad, wherein the petitioners were found innocent. The Sub Divisional Magistrate has given a direction that wrong entries be corrected. The copy of the inquiry report dated 03.10.2013 is attached herewith as Annexure P-6. He further contended that investigation is already completed and challan has been filed. So, the petitioners shall not be required for any custodial interrogation. There was also no wrongful loss to the government as the sale deed was not registered. Thus, he pleaded that the petitioners deserve the concession of anticipatory bail.

8. I have duly considered the aforesaid contentions.

9. There is absolutely no dispute with the ratio of law laid down in the cases referred by learned counsel for the petitioners with respect to maintainability of the second petition for grant of anticipatory bail; the maintainability of the petition for grant of anticipatory bail after the presentation of the challan; that the anticipatory bail can be sought when the accused apprehends arrest either from the police or from the Court as well and the basic principles governing the grant of anticipatory bail. But at the same time the Hon'ble Supreme Court in case **Jai Parkash Singh Vs. State of Bihar and another etc. 2012(2) RCR (Criminal) 251** has laid down that the anticipatory bail cannot be granted

as a matter of rule. The anticipatory bail being an extra ordinary privilege should be granted only in exceptional cases. It can only be granted where the Court is prima facie of the view that petitioners have falsely been enroped in the crime.

10. In the instant matter, the case has been registered against the petitioners on the basis of the complaint made by Tehsildar-cum-Sub Registrar, Jalalabad before whom the petitioners have presented the sale deed for registration with respect to the sale of the land on 25.03.2013. As per the prosecution allegations, the complaint was moved by the Tehsildar-cum-Sub Registrar after inspecting the revenue record and finding that the tempering with of the revenue record has been made in order to sell the land belonging to Provincial Government by the present petitioners. It was found that even the mutation No.807, on the basis of which the entries were made in the Jamabandi for the year 2009-2010, was the result of forgery as in the record of the District Office, no such mutation was found to have been entered.

11. Learned counsel for the petitioners has vehemently relied upon the inquiry report of the Sub Divisional Magistrate, Jalalabad dated 03.10.2013. It is not known under whose orders the Sub Divisional Magistrate, Jalalabad has carried out this inquiry. The present case was not got registered by any private person, rather it was got registered by a senior revenue officer i.e. Tehsildar-cum-Sub Registrar, after finding the forgery in the revenue record. Even in the inquiry report by the Sub Divisional Magistrate, the entries in the revenue record have been found

wrong and he has ordered the correction of those entries. Again it is not known under what provision of law, while acting as a Sub Divisional Magistrate, he is competent to order any such correction in the revenue record. The fact remains that the petitioners have tried to sell the land belonging to the Provincial Government on the basis of the forged revenue record. The plea raised by learned counsel for the petitioner that no wrongful loss has been caused to anybody, hence no offence is made out has also no substance as if the Tehsildar-cum-Sub Registrar would not have been vigilant, the petitioners would have been able to succeed in their design. Mere, this ground that now the investigation is complete and the report under Section 173 Cr.P.C. has been presented in the trial Court is also no ground to make the petitioners entitled to claim the concession of anticipatory bail. They can well appear before the trial Court and avail the remedy of regular bail in accordance with law but they have not been able to make out the exceptional case to seek the extraordinary privilege of the anticipatory bail.

12. Thus, keeping in view my aforesaid discussion, the present petition is without any merits and the same is hereby dismissed.

13. However, it is made clear that nothing expressed herein will cause any prejudice in the mind of learned courts below to consider the plea of regular bail of the petitioners, which shall be decided on merits.

27.07.2015
sunil yadav

(DARSHAN SINGH)
JUDGE