

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-38967-2014 (O&M)

Date of decision:13.03.2015

Daljinder Singh @ Sahbi

...Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Vipin Mahajan, Advocate for the petitioner.

Mr.K.D.Sachdeva, Addl. A.G., Punjab.

Mr.Ritesh Pandey, Advocate for the complainant.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioner seeks pre-arrest bail in FIR No.168 dated 24.9.2014 registered under Sections 406/506 IPC at Police Station Civil Lines Batala, District Gurdaspur.

Notice of motion was issued and petitioner was granted interim protection.

Complainant has moved CRM-4458-2015 for placing on record the compromise dated 16.8.2012 as Annexure R-1.

Learned counsel for the petitioner submits that petitioner has joined the investigation and his custodial interrogation is not required. Admittedly, initially the petitioner was owner to the extent of half share of the total land, i.e. 64 marlas. In the beginning, the relation between the petitioner and the complainant were cordial. But thereafter differences arose

and the complainant has got registered the present FIR. In support of his contentions, he relied on the following judgments:-

(i) Velji Raghavji Patel v. State of Maharashtra, 1965

AIR (SC) 1433;

(ii) Surender Shedha v. State (Delhi Admn.), 2000 (4)

RCR (Criminal) 338

(iii) Parmod Kumar v. Satish Kumar 1985 (1) RCR

(Crl.) 446 (P&H);

(iv) Sh. Avnash Chander v. State of Punjab 1983 (2)

RCR (Crl.) 528 (P&H);

(v) Govind Das Biyani and others v. Badri Narayan

Rathi, 1995(4) Crimes 755 (MP) and

(vi) Jayanta Saha v. State of West Bengal and

another, 2004(3) Crimes 542 (Calcutta)

Finally, he prays for allowing the instant petition.

On the other hand, learned counsel for the State submits that the petitioner has joined the investigation but investigation is still going on.

Learned counsel for the complainant refers to the compromise dated 16.8.2012 (Annexure R-1) and submits that this compromise very much bears the signatures of the petitioner. Petitioner was trying to back out from the compromise. He further submits that petitioner had no authority to mortgage the entire land with the bank so as to get loan even on the share of the complainant. In this view of the matter, a clear cut case is made out against the petitioner. He concluded by submitting that petitioner is not entitled for the concession of pre-arrest bail and the present petition may be dismissed.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case for pre-arrest bail, for the following more than one reasons.

It is a matter of record and not in dispute that petitioner as well as the complainant were owners of a plot measuring 64 marlas to the extent of 1/2 share each. The complainant has levelled specific and categoric allegations against the petitioner. Neither petitioner has owned the terms and conditions of compromise nor he has made payment to the complainant in terms thereof.

It is also a matter of record that the complainant has mortgaged the entire land measuring 64 marlas with the bank and took loan for his business being run from the same plot. During the course of hearing, when a pointed question was put to the learned counsel for the petitioner as to under which authority, petitioner has mortgaged the share of the complainant also, he had no answer and rightly so, because it was a matter of record. In this view of the matter, it cannot be said that no case is made out against the petitioner.

Further, over all conduct of the petitioner also does not entitle him for concession of anticipatory bail, at the hands of this Court. Neither he is owning the terms and conditions of compromise nor he is ready to make the payment to the complainant even now. Under these circumstances, it can be safely concluded that petitioner has turned dishonest and was trying to get undue benefit of his possession over the

said joint land, by mortgaging the share of the complainant as well with the bank, thereby creating charge in favour of the bank and against the interest of the complainant.

So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, the same have been found distinguishable on facts and are of no help to the petitioner in the matter of granting anticipatory bail. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others,** 2002 (3) SCC 533.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, instant petition stands dismissed.

13.03.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE