

Crl.Misc.No.M-42835 of 2013 (O&M) -1-

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

Crl.Misc.No.M-42835 of 2013 (O&M)

Date of decision : 21.4.2015

Subhash Chand Wadhwa

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr.Kamal Sharma, Advocate
for the petitioner.

Mr. PJS Hundal, AAG, Punjab.

Mr. Sukhdeep Singh Bhinder, Advocate
for respondent No.2.

.....

MAHESH GROVER, J.

The petitioner prays for cancellation of anticipatory bail of accused Malkiat Singh, arrayed as respondent No.2, which was granted by this court by virtue of order appended to the petition as Annexure P-7 and reproduced as under :-

“Petitioner Malkiat Singh Sarpanch son of Sadhu Singh has preferred the instant petition for the grant of anticipatory bail, in a case registered against him along with his other co-accused, vide FIR No.181 dated 1.8.2012 (Annexure P1), on accusation of having committed the offences punishable under sections 419, 420, 465, 468, 471 and 120-B IPC by the

police of Police Station City Sangrur, invoking the provisions of section 438 Cr.PC.

2. Notice of the petition was issued to the State.

3. After hearing the learned counsel for the parties, going through the record with their valuable help and after considering the entire matter deeply, to my mind, the present petition deserves to be accepted in this context.

4. During the course of preliminary hearing, the following order was passed by this Court on 14.1.2013:-

“Learned counsel, inter-alia, contended that the Tri Murti firm was the owner and all its partners gave power of attorney to the petitioner on behalf of all the partners. The argument is that the petitioner has rightly sold the land, vide registered sale deed and no indicated offences are made out against him and nothing is to be recovered from him.

Heard.

Notice of motion be issued to the respondent, returnable for 25.01.2013.

Meanwhile, the petitioner is directed to join the investigation before the next date of hearing. In the event of his arrest, the Arresting Officer would admit him to bail on his furnishing adequate bail and surety bonds in the sum of Rs.25,000/- to his satisfaction.”

5. At the very outset, the learned State counsel, on instructions from ASI Ranjit Singh, has acknowledged the factual matrix and submitted that the petitioner has already joined the investigation. He is no longer required for further interrogation at this stage. Moreover, it is not a matter of

dispute that the registered sale deed executed by the petitioner is dated 9.5.2007, whereas the instant case was registered against the accused on 1.8.2012 i.e. after a gap of more than five years. The dispute appears to be of a civil nature. There is no history of his previous involvement in any such criminal case.

6. In the light of aforesaid reasons and taking into consideration the totality of the facts & circumstances, emanating from the record, as narrated here-in-above, the present petition is hereby accepted and the interim anticipatory bail already granted to petitioner, vide order dated 14.1.2013 is made absolute, subject to compliance of conditions as envisaged under section 438(2) Cr.PC.

7. Needless to mention that if the petitioner does not cooperate or join the investigation, the prosecution would be at liberty to move a petition for cancellation of his anticipatory bail.”

A perusal of the aforesaid would indicate that ASI Ranjit Singh projected to the court through the learned counsel for the State that the accused had joined the investigation and was no longer required for further interrogation at that stage, which persuaded the court to pass an order coupled with other additional factors such as the FIR being registered after 5 years of the alleged sale deed on the basis of a forged power of attorney and the case possibly being of a civil nature with no history of

previous involvement of accused Malkiat Singh in other cases.

From the submissions made by the learned counsel for the petitioner two facts would stand out. A reference to Annexure P-8 which is a report prepared by the same officer i.e. ASI Ranjit Singh explicitly giving details of the investigation and the non-cooperative attitude of accused Malkiat Singh coupled with the reply now filed by the State with reference to para 3, which is extracted herebelow, it would stand out that there is a deep rooted fraud committed by accused Malkiat Singh along with other co-accused namely Arvind Batra who is still absconding and the fact that there are two more cases against Malkiat Singh. All this indicates that a wrong assertion was made by ASI Ranjit Singh which persuaded the court to pass a favourable order to Malkiat Singh.

“3. That it is further submitted that of course, Malkiat Singh (i.e.respondent No.2) accused in the instant case, has not misused the concession of bail granted by the Hon'ble High Court, however, during interrogation, respondent No.2 made disclosure statement that Maninderpal Singh his co-accused knew Arvind Batra @ Parveen s/o Ram Sarup r/o Block No.H-3,Flat No.173, Vikas Puri, New Delhi, who got him acquainted with said Arvind Batra. Arvind Batra said to him that a piece of land measuring 1 bigha 13 biswa of Fateh

Chand father of present petitioner is lying in village Kular Khurd as barren and Fateh Chand had died and his heirs are residing at Delhi, so by preparing forged GPA, we may succeed in usurping the said land. Thereafter he gave his photograph to said Arvind Batra for preparing forged GPA, who prepared forged GPA in his name, on the basis of said forged GPA, the sale deed of said land was firstly executed in the name Maninderpal Singh (Co-accused of respondent No.2) and then he got executed the sale deed in the name of Kaur Singh. However, Arvind Batra could not be arrested so far, as he was not found residing at the address disclosed by Malkiat Singh, respondent No.2 and he can only tell the correct and present address of accused Arvind Batra and also his whereabouts. In view of all this, the bail of Malkiat Singh, respondent No.2 should be cancelled.”

Ordinarily this court would not have cancelled the bail once granted unless an abuse of the concession is shown, but finding that the accused has clearly manipulated the Investigating Officer ASI Ranjit Singh into making a favourable submission before this court prompting the court to pass an order of bail, I am of the view that it is a clear case where there has been an interference in the process of law by the Investigating Officer in collusion with the petitioner and thus the benefit which has been

obtained by fraud and collusion, writ large on the face of it cannot be permitted to continue any further. The court has noticed that the said ASI Ranjit Singh has dared to make a misrepresentation of facts whereas Anneure P-8 which is extracted herebelow would clearly indicate non-cooperative attitude of accused Malkiat Singh :

“5. Accused Malkiat Singh has joined investigation accused has not given correct information for this case and he is keeping calm on facts of the case. He has not replied questions properly. He is not disclosing following facts :-”

This fact has now been fortified by the reply of Shri Gurpreet Singh, PPS, Deputy Superintendent of Police, Sub Division, Sangrur where it is stated that the land of a dead man has been sold with a deep rooted conspiracy with the main accused Arvinder Batra who is still at large.

For the aforestated reasons, I hereby order the cancellation of bail granted by this Court to respondent No.2 Malkiat Singh Sarpanch son of Sadhu Singh vide order dated 25.1.2013 as it is clear that he was not cooperating with the investigating agency.

Before parting with this order, issue notice of contempt to ASI Ranjit Singh for having made a misstatement before this Court and obstructing course of justice. Issue notice also to SSP

Sangrur as to why disciplinary proceedings have not been initiated against the said officer when the reply filed to the petition and material on record would clearly indicate a false assertion by ASI Ranjit Singh before this court jeopardizing the entire investigation. The present petition stands allowed.

Office to prepare a separate file of contempt papers.

List the matter before the Bench dealing with contempt roster on 25.5.2015.

21.4.2015
dss

(MAHESH GROVER)
JUDGE