

**CRM-19801-2014 in/and
CRM-M-43137-2013 (O&M)**

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

**1. CRM-19801-2014 in/and
CRM-M-43137-2013 (O&M)
Date of Decision: August 27, 2015**

Malti Minhas

.....Petitioner

Versus

State of Punjab

.....Respondent

2. CRM-M-27524-2015 (O&M)

Davinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Rajiv Kataria, Advocate
for the petitioner in CRM-M-43137-2013.

Mr.Sandeep Arora, Advocate
for the petitioner in CRM-M-27524-2015.

Mr.K.S.Pannu, DAG, Punjab.

Mr.A.S.Gill, Advocate
for the informant.

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- 1. Whether Reporters of local papers may be allowed to see the judgment ? yes**
- 2. To be referred to the Reporters or not ? yes**
- 3. Whether the judgment should be reported in the Digest? yes**

Naresh Kumar Sanghi, J.(Oral)

CRM-19801-2014

Prayer in this application, filed under Section 482, Cr.P.C., is for placing on record the additional affidavit of the petitioner Malti Minhas along with documents, Annexures P6 to P15.

Notice of the application was issued to the State vide order dated 09.12.2014.

Learned counsel for the State assisted by learned counsel for the informant submits that the additional affidavit, dated 28.05.2014 contains the additional grounds for consideration of the pre-arrest bail petition. The said grounds were never raised before learned Additional Sessions Judge at the time of arguments whereby the pre-arrest bail of the petitioner was declined.

However, after hearing the learned counsel for the parties, the additional affidavit of the petitioner-Malti Minhas and the documents Annexures P6 to P15 are taken on record, subject to all just exceptions.

CRM disposed of.

CRM-M-43137-2013 &
CRM-M-27524-2015

Prayer in both the above captioned criminal miscellaneous petitions is for grant of pre-arrest bail to the petitioners, Malti Minhas and Davinder Singh, who have been booked for having committed the offences punishable under Sections 120-B, 406 and 420, IPC, in a case arising out of FIR No.57, dated 11.03.2013, registered at Police Station, Nakodar, District Jalandhar, hence, both these petitions are being disposed of by this common order.

Mr.Rajiv Kataria, learned counsel for the petitioner, Malti Minhas, submits that a dispute of civil nature has been given the colour of a criminal case; Smt.Bhagwanti Devi, mother of the informant, Buta Singh, had entered into an agreement to sell 35 acres of her land with the petitioner for a sale consideration of ₹1,80,00,000/- (Rupees one crore and eighty lacs only) and a sum of ₹1,60,00,000/- (Rupees one crore and sixty lacs only) was paid by the petitioner to Smt.Bhagwanti Devi in the presence of the witnesses; when Smt.Bhagwanti Devi did not execute the sale deed, then the petitioner had filed a civil suit for specific performance and learned Civil Judge was pleased to

grant the stay in her (petitioner-Malti Minhas) favour; appeal filed against the grant of stay was dismissed upto the level of this Court; Informant-Buta Singh, who is son of Smt. Bhagwanti Devi, became dishonest and with an intention to usurp the money paid by the petitioner-Malti Devi to Smt.Bhagwanti Devi at the time of execution of agreement to sell, in collusion with the police lodged the impugned FIR; immediately after registration of the case an application for grant of anticipatory bail was presented before learned Additional Sessions Judge, Jalandhar, which was dismissed on 03.05.2013 and thereafter CRM-M-20177-2013, a petition for grant of pre-arrest bail was presented before this Court on 19.06.2013 in which notice of motion was issued for 09.09.2013 vide order dated 27.08.2013. The said petition was dismissed as withdrawn with permission to file fresh one and thereafter the petitioner filed the present petition on 16.12.2013. In the meantime, the Investigating Agency initiated the process for getting the petitioner declared as proclaimed offender. Once the Investigating Agency was aware of the fact that the petitioner was taking the legal steps to seek the concession of pre-arrest bail from a Court of competent jurisdiction, in that eventuality it was not appropriate for the Investigating Agency to have initiated

the process of getting the petitioner declared as proclaimed offender.

On behalf of petitioner-Davinder Singh, it was submitted that he(Davinder Singh) was not a beneficiary and the intention to commit the offences was conspicuously missing on his part; petitioner-Davinder Singh had witnessed the agreement to sell, therefore, he was not aware regarding the *mala fide* intention of petitioner-Malti Mihas, his co-accused.

On the other hand, Mr.K.S.Pannu, learned Deputy Advocate General, Punjab, assisted by Mr.A.S.Gill, learned counsel for the informant, submits that Smt.Bhagwanti Devi was aged about 80 years when she was made to believe by petitioner-Malti Minhas to accompany her (Malti Minhas) to Tehsil Complex for receiving the compensation released by the Railway Department in her favour against acquisition of her land. Petitioners, in connivance with their co-accused Surjit Singh, fabricated an agreement in favour of Malti Minhas by Smt.Bhagwanti Devi for selling 35 acres of land and obtained her signatures and thumb impressions on the said agreement to sell under the belief that Smt.Bhagwanti Devi had to receive the compensation. As soon as informant-Boota Singh, who is son of

Bhagwanti Devi residing in a foreign country, learnt about the forgery and cheating committed by the petitioners and their co-accused Surjit Singh, he rushed to India and after confirming all the facts from his mother Smt.Bhagwanti Devi, reported the matter to the police. They further argued that it was highly improbable that an amount of ₹1,60,00,000/- (Rupees one crore and sixty lacs only) shall be paid in cash as an earnest money. It has not been explained by petitioner-Malti Minhas that from which source she came in possession of such a huge amount. The civil suit filed by the petitioner, Malti Minhas, for specific performance is pending, however, the stay was not granted restraining the informant from dispossessing the petitioner from the land in dispute. Learned Civil Judge had granted the stay not to alienate the land in dispute by the parties; the agreement to sell was regarding 35 acres of land but Smt.Bhagwanti Devi was owner in possession of 21 acres of land only; it was not believable that an agreement to sell involving the huge land and the large amount as sale consideration would not be got registered from the Sub Registrar; the alleged agreement to sell has not even been scribed by a licensed Deed writer (*Wasika Nawees*) and that the petitioner, Malti Minhas had filed the

application for grant of anticipatory bail within few days of the registration of the first information report, it means she was well aware of the fact that she was required by the police in the present case but she concealed herself and avoided her arrest. Therefore, the Investigating Agency had rightly initiated the process of getting her declared proclaimed offender and the learned Area Judicial Magistrate was well within his jurisdiction to declare her a proclaimed offender. In support of their contentions, learned counsel for the State assisted by learned counsel for the informant, Mr.A.S.Gill, Advocate, has placed reliance on **State of Madhya Pradesh v. Pradeep Sharma**, 2014 (1) R.C.R. (Criminal) 269 (SC) to contend that the Courts should be slow in showing indulgence to a person who is evading his arrest for a long time and has also been declared as a proclaimed offender.

After hearing the learned counsel for the parties and going through the material available on record as well as the police file brought by the Investigating Officer, this Court finds that the FIR in the present case was registered on the complaint of Buta Singh, a resident of New York (U.S.A.) alleging that his father owned 21 acres of agricultural land at Nakodar. After the

death of his father the land was inherited by Smt.Bhagwanti Devi (mother of informant-Buta Singh), Sukhwinder Kaur (sister of the informant) and Buta Singh (informant) himself. Since the informant –Buta Singh and his sister Sukhwinder Kaur were settled abroad, therefore, to manage the agricultural land, both of them (informant-Buta Singh and his sister-Sukhwinder Kaur) had executed General Power of attorney in the year 1984 in favour of their mother Smt.Bhagwanti Devi, who was living in Nakodar. Surjit Singh, a co-accused of the petitioners, was helping Smt.Bhagwanti Devi, mother of the informant, in her daily pursuits. Petitioners Malti Minhas, Davinder Singh and their co-accused Surjit Singh hatched a conspiracy to grab 21 acres of agricultural land belonging to the informant, his sister and mother and in furtherance of the said conspiracy, petitioner Malti Minhas approached Smt.Bhagwanti Devi and convinced her (Bhagwanti Devi) that she (Malti Minhas) was a Government official. Railway Department had released the compensation for the land belonging to Smt. Bhagwanti Devi and others and the same could be paid to her (Smt.Bhagwanti Devi) only. Petitioner-Malti Minhas made Smt.Bhagwanti Devi agreeable to visit Tehsil Complex, Jalandhar, for receiving the compensation. Petitioners

and their co-accused Surjit Singh brought Smt.Bhagwanti Devi to tehsil Complex and obtained her signatures/thumb impressions on various blank stamp papers on the pretext that the same were required for the purpose of receiving the compensation. Later on, the petitioners and their co-accused forged those blank papers and prepared an agreement to sell in favour of petitioner Malti Minhas by Smt.Bhagwanti Devi for selling the land measuring 35 acres in the sum of ₹1,80,00,000/- (Rupees one crore and eighty lacs only). A sum of ₹1,60,00,000/- (Rupees one crore and sixty lacs only) was allegedly paid in cash to Smt.Bhagwanti Devi.

NRI Cell, Jalandhar (Rural), verified the facts and found that the petitioners in connivance with their co-accused Surjit Singh had prepared the forged agreement to sell and, as such, first information report for the offences punishable under Sections 120-B, 406 and 420, IPC, was registered against the petitioners and their co-accused Surjit Singh.

There appears to be substance when learned counsel for the State, assisted by learned counsel for the informant, submitted that it was not expected in normal course that a person would pay ₹1,60,00,000/- (Rupees one crore and sixty

lacs only) in cash for entering into an agreement to sell without getting the same (agreement to sell) registered. There appears to be strength in the submission of learned counsel for the State that petitioner Malti Minhas could not substantiate during investigation that from which source she had received such a huge amount for making payment to Smt.Bhagwanti Devi, a lady aged about 80 years. While dealing with the bail petitions, the Court has not only to keep in mind the case set up by the accused but has also to consider the severity of the allegations put forth by the aggrieved party and their veracity. The facts of the case would prima facie reveal that the petitioners, in conspiracy of their co-accused, forged an agreement to sell with a motive to grab the agricultural land belonging to the aggrieved party. It is also apposite to mention that while forging the agreement to sell, the petitioners failed to notice that the aggrieved party had only 21 acres of agricultural land at Nakodar while the agreement to sell was prepared for selling 35 acres of agricultural land. In the considered opinion of this Court, custodial interrogation of the petitioners would facilitate the Investigating Agency to unearth the factual aspects of the case so that appropriate legal actions are initiated against the real accused.

Before parting the order, it is apposite to mention that petitioner Malti Minhas has been declared a proclaimed offender by the Court of learned Area Judicial Magistrate since she is evading her arrest for the last more than two years.

Dismissed.

Interim directions issued on various dates are hereby vacated.

August 27, 2015
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(NARESH KUMAR SANGHI)
JUDGE