

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

**Crl. Misc. No. M-9475 of 2015 (O&M)
Date of decision : 23.04.2015**

Surender Kumar

..... Petitioner

versus

State of Haryana

... Respondent

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.D.S. Hooda, Advocate
for the petitioner.

Mr. S.S. Pannu, DAG Haryana.

ANITA CHAUDHRY, J.

Through the present petition the petitioner is seeking anticipatory bail in FIR No.82 dated 17.04.2013, registered under Sections 420/406 IPC at Police Station Sector 31, Faridbad.

Heard.

A complaint had been made by Raja Ram that he had purchased a plot and had been given full payment and had all the receipts of payment with him. The complainant took possession of the property and raised a boundary wall. When the complainant went to construct the plot, he found that the boundary wall had been demolished by the accused in his absence and forcible possession had been taken. The complainant approached the police immediately in November, 2011 but no action was taken. He approached the higher authorities and it was only in April, 2013 that the FIR was registered.

The counsel for the petitioner contends that the receipt regarding payment had been given by Subhash and not by the petitioner. He urges that the petitioner had purchased that plot from the original owner Raj Kishore @ Gabbar. The counsel refers to Annexure P-5. He contends that the petitioner had filed a suit for permanent injunction against Raj Kishore and others in 2012. It was urged that Subhash who was the main accused had already been allowed anticipatory bail vide order dated 23.09.2014 (Annexure P-4).

The bail application has been opposed by the State and it was urged that the same property was being sold over & over again and the police had contacted Raj Kishore who had denied executing any agreement in favour of Surender Kumar and the agreement is fake and custodial interrogation is necessary to find the modus operandi. It was urged that the petitioner has sold the property to number of persons and there is a nexus between the accused which has to be unearthed and custodial investigation is required.

The Court is expected to carefully examine the available record, particularly the allegations which are directly attributable to the accused. The relief under Section 438 Cr.P.C. is discretionary in nature. In the case of **Adri Dharan Das v. State of West Bengal, AIR 2005 Supreme Court 1057**, the Apex Court said that the power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be **falsely** implicated or where there are reasonable grounds for

holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438 of the Code. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation in non-bailable offences.

A three Judges Bench of the Apex Court in the case of **Pokar Ram v. State of Rajasthan, AIR 1986 Supreme Court, 969** observed as under:

"Relevant considerations governing the Courts decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher Court and bail is sought during the pendency of the appeal."

I have considered the rival submissions.

Considering the various principles laid down by the Apex Court and the nature of allegations, gravity of the offence and the circumstances of the case, I find force in the submissions made by the State counsel that custodial interrogation of the petitioner is necessary. In a case like this, effective interrogation of the petitioner would be of tremendous advantage in eliciting information and material. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail. The allegations against the petitioner are grave. The present case cannot be said to be of

false implication. I do not think that the accused is entitled to the discretionary relief of anticipatory bail.

The petition is dismissed.

April 23, 2015

Sunil

**(ANITA CHAUDHRY)
JUDGE**