

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

Date of decision : September 20, 2016

1. CRM-M No.17886 of 2016

Jagraj Singh and others vs State of Punjab

2. CRM-M No.17945 of 2016

Amarjit Singh and another vs State of Punjab

3. CRM-M No.31859 of 2016

Jagraj Singh and others vs State of Punjab and another

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. KS Dadwal, Advocate
for the petitioners.

Ms. Amarjit Kaur Khurana, Addl. AG Punjab

Mr. Gurmeet Singh, Advocate
for the complainant.

Ajay Tewari, J (Oral)

This order shall dispose of the aforesaid three petitions as they arise from the same FIR. CRM-M No.17886 of 2016 has been filed by petitioners-Jagraj Singh, Richa Sandhu, Amarjit Singh and Ravneet

Singh for quashing the order dated 8.2.2016 (Annexure P-11) declaring

them as proclaimed offenders; CRM-M No.17945 of 2016 has been filed by petitioners-Amarjit Singh and Ravneet Singh for grant of anticipatory bail in case FIR No.27, dated 29.01.2015, registered under Sections 420, 406, 120-B of the IPC, at Police Station Samrala, District Khanna, and CRM-M No.31859 of 2016 has been filed by petitioners-Jagraj Singh, Richa Sandhu, Amarjit Singh and Ravneet Singh for quashing of the aforesaid FIR.

Counsel for the petitioners, at the very outset, states that he does not press CRM-M No.31859 of 2016 for quashing of the FIR and prays for permission to withdraw the same with liberty to the petitioners to take all the pleas before the trial Court at an appropriate stage.

Allowed as prayed for. CRM-M No.31859 of 2016 is dismissed as withdrawn.

As regards the other two petitions, allegations were that petitioner-Jagraj Singh had entered into an agreement to sell his land and had taken ₹ 30 lacs as advance but instead of executing the sale deed got transferred the property in favour of his wife Richa Sandhu. It deserves mention here that originally, the petitioners had filed a petition for anticipatory bail which was rejected vide order dated 11.2.2015 passed by the Addl. Sessions Judge, Ludhiana. At that time, petitioner-Kulwant

Kaur wife of petitioner-Amarjit Singh filed an application for fair

inquiry. Despite the prayer for anticipatory bail having been rejected, the petitioners were not arrested by the police (presumably because of pendency of the inquiry). By order dated 5.1.2016, the inquiry culminated against the petitioners and it was held that the FIR was rightly registered and a direction was given to file the challan. Within one month thereof, by order dated 8.2.2016, the petitioners were declared as proclaimed offenders. In this interregnum, civil suits have also been stated to be filed between the parties. Both these petitions were filed on 13.5.2016; one as mentioned above challenging the order of PO and the second for anticipatory bail. Both came up together before this Court on 23.5.2016. In CRM-M No.17945 of 2016 (for anticipatory bail), the following order was passed :-

“ Counsel would submit that the allegations raised by the complainant are founded on a agreement to sell dated 24.1.2014 in respect to a parcel of land. The dispute is essentially civil in nature. Further contended that two separate civil proceedings have emanated from the agreement to sell in question dated 24.1.2014 i.e. (i) a suit for specific performance having been filed by the complainant party and (ii) a suit for declaration challenging the agreement to sell itself by the accused party. It is argued that the present F.I.R is nothing but an abuse of the process of law and to pressurize the petitioners herein/accused party to enter into some kind of settlement.

Notice of motion, returnable for 2.9.2016.

In the meanwhile, petitioners are directed to join investigation.

In the event of arrest, the petitioners shall be released on interim bail subject to the satisfaction of

the Arresting Officer/Investigating Officer. The petitioners shall join investigation as and when called upon to do so and they shall remain bound by the conditions envisaged under Section 438 (2) Cr.P.C.”

In CRM-M No.17886 of 2016 (for quashing of the order of PO), the following order was passed :-

“ Heard.
Notice of motion, returnable for 2.9.2016.”

Counsel for the petitioners has argued that after the order dated 23.5.2016, the petitioners have joined the investigation and, in any case, even as per the report dated 5.1.2016 investigation is complete and as mentioned in the said order, it is a civil dispute which has been given a criminal colour and, therefore, the interim order dated 23.5.2016 be made absolute.

Counsel for the complainant, on the other hand, has argued that in view of the decision of the Hon'ble Supreme Court in State of Madhya Pradesh v. Pradeep Sharma 2014(1) RCR (Criminal) 269, an application for anticipatory bail does not lie at the instance of a person against whom declaration has been made under Section 82 of the Cr.P.C.

Counsel for the petitioners has argued that there is no quarrel with this proposition of law in absolute terms but in the present case the petitioners have also challenged the order declaring them as proclaimed offenders and, in case that order is found to be illegal and is

set aside, the judgment of the Supreme Court would not have any application.

Counsel for the complainant is not in a position to doubt the correctness of this argument but has stated that the order declaring petitioners-Amarjit Singh and Ravneet Singh as proclaimed offenders is in any case legal (even while admitting that the order against petitioners-Jagraj Singh and Richa Sandhu may be set aside because they were statedly living abroad throughout the entire process of proclamation).

Counsel for the petitioners, on the other hand, has argued that once the petitioners were repeatedly in touch with the police officials for the purpose of the inquiry instituted on the complaint of Kulwant Kaur and were regularly staying in their village Tehang and the inquiry had culminated only on 5.1.2016, the impugned order dated 8.2.2016 is ex-facie illegal because throughout the entire process, there was no reason for the petitioners to have evaded the process of law. He has further argued that once the Sarpanch had herself mentioned that petitioners-Amarjit Singh and Ravneet Singh are not permanently residing in village Tehang, and even on the warrants the report is that they have not been found, proclamation could not have been issued without ascertaining their address. As regards petitioners-Jagraj Singh and Richa Sandhu, counsel for the petitioners states that they would

come back to India and surrender before the Court within one month.

In my opinion, the arguments of counsel for the petitioners carry more weight. The order declaring the petitioners as proclaimed offenders seems to have been passed in a mechanical manner because as regards petitioner-Jagraj Singh and Richa Sandhu, the Court has not cared to see that on the previous date it was mentioned that they were living abroad. In the circumstances, CRM-M No.17886 of 2016 is allowed and the order dated 8.2.2016 declaring the petitioners as proclaimed offenders is set aside. It is directed that in case petitioners-Jagraj Singh and Richa Sandhu surrender before the Court on or before 19.10.2016, the trial Court will admit them to bail to its satisfaction.

As regards CRM-M No.17945 of 2016, since the petitioners have joined the investigation which fact is not denied by learned Addl. AG Punjab, this petition is allowed and the order dated 23.5.2016 is made absolute.

September 20, 2016
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No