

CRM-M-31665-2016 (O&M)

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

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**CRM-M-31665-2016 (O&M)
Decided on: November 9, 2016.**

Simarjit Kaur and another

.. Petitioner(s)

VERSUS

State of Punjab and another

.. Respondent(s)

*** * ***

CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

*** * ***

**PRESENT Mr.R.S.Cheema, Sr. Advocate, with
Mr.R.K.Trikha, Advocate, for the petitioners.**

Mr.Kamal Sehgal, Addl. A.G. Punjab.

**Mr.N.P.Singhy, Advocate,
for the complainant.**

M.M.S. BEDI, J. (ORAL)

Petitioners Simarjit Kaur and Gursheer Singh have sought concession of pre-arrest bail in a case which was registered at the instance of Bani Amrit Kaur alleging that mother of the complainant Paramjit Kaur owned 7 marlas of land and she was co-owner along with petitioner no.1 being sister. Paramjit Kaur died on 18.7.1996. Petitioner no.1 who happens to be maternal aunt of complainant allegedly impersonated as Paramjit Kaur and appointed her husband petitioner no.2 as general power of attorney and sold her land on 30.9.1997 to different people. Mother of the complainant Paramjit Kaur had died on 18.7.1996 whereas the sale deed is dated

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30.9.1997.

The application for pre-arrest bail filed by the petitioners has been dismissed by the Sessions Court, despite the fact that the sale deed had been executed about 20 years back i.e. in the year 1996-97, observing that custodial interrogation of the petitioners would be required and that the delay in lodging of FIR will not dilute the offence committed by the petitioners.

Counsel for the petitioners has argued that till date the complainant has not filed any civil litigation to enforce the legal rights of ownership in the capacity as heir of Paramjit Kaur.

It is a case where besides the present sale deed Annexure P4 dated 30.9.1997, other sale deeds Annexure P3 dated 24.9.1997, Annexure P5 dated 13.11.1997 and Annexure P6 dated 13.11.1997, have also been executed by petitioner no.2 and petitioner no.1. Petitioner no.1 had impersonated Paramjit Kaur in sale deed Annexure P5 and P6 also and the complainant, who attained majority on 17.10.1998, was aware of these facts from the inception. Complainant had compromised in the year 2007 and filed an affidavit dated 11.8.2007, a copy of which has been placed on record as Annexure P9, in a family settlement which is Annexure P10. Contents of the compromise deed Annexure P10 have been read over by Mr.R.S.Cheema, learned Senior counsel, appearing on behalf of the petitioners to indicate that while entering into family settlement on 11.8.1997, the act of petitioner nos.1 and 2 was known to the complainant. Annexure P8 is copy of General Power of Attorney executed on 29.9.1999 by the complainant herself in favour of Simarjit Kaur petitioner no.1.

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Mr.Kamal Sehgal, Additional Advocate General, Punjab, appearing on behalf of the State along with complainant has vehemently urged that act of impersonation of petitioner no.1 is apparent on the record as the original owner who was co-sharer with petitioner no.1 had died on 18.7.1996 prior to the date of the sale deed i.e. 30.9.1997. The said act is offence against the State and consent or acquiescence of the complainant, if any, will not prejudice the right of the prosecution agency. The complainant also appeared to state that on account of fiduciary relationship of the complainant and petitioner no.1, the power of attorney and other documents were got signed from her without enabling her to know that her right in the property left by her mother was being prejudiced.

After hearing the learned Senior counsel appearing on behalf of the petitioners as well as learned State counsel and the complainant, I am of the considered opinion that the act of execution of sale deeds allegedly executed by petitioner no.1 by impersonation as Paramjit Kaur, is certainly a serious offence but silence of complainant for a period of more than 20 years, will be a circumstance to arrive at a presumption that sending the petitioners behind bars will not, in any manner, promote effective investigation. Since the case of the prosecution is mainly based upon the documents which can always be procured from different registering authorities, the petitioners can be granted the concession of pre-arrest bail especially when the culpability of the petitioners on account of acquiescence of the complainant is a debatable issue.

The petition is allowed. It is ordered that in case of arrest of the petitioners, they will be released on bail to the satisfaction of the

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arresting officer subject to a condition that the petitioners will join investigation as and when required and will not tamper with the evidence or hamper investigation, in any manner.

(M.M.S. BEDI)
JUDGE

November 9, 2016.
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Whether speaking / reasoned	Yes / No
Whether reportable:	Yes / No