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

Sr. No.103

CRM-M No.11212 of 2017
Date of decision: 06.04.2017

Dharminder Sharma ....Petitioner

versus

State of Punjab ....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Tanu Bedi, Advocate
for the petitioner.

DEEPAK SIBAL, J. (Oral)

Through the present petition filed under Section 438 Cr.P.C., the petitioner seeks anticipatory bail in FIR No.27 dated 07.02.2017, registered under Sections 417, 420, 467, 468, 471 IPC, at Police Station Division No.1, Pathankot, District Pathankot.

The case of the prosecution as borne out from the record is that the complainant, an ex-serviceman, came in contact with the petitioner, a property dealer, who had shown to the complainant 64 kanals 15 marlas of land in village Tirhari Teeka Bhabbar, District Pathankot, which according to the petitioner was for sale. The complainant being interested to buy the above property, on the asking of the petitioner paid ₹53.40 lakhs to him who after receipt of the same refused to get the sale deed registered. In fact, the petitioner showed to the complainant another piece of land in village Gho, District Pathankot, stating that the said land was owned by him and if the complainant purchased the said land, the same would be easily sold for a huge profit after two months. Tempted by the offer, the complainant paid ₹28.50 lakhs to the petitioner for the land in village Gho but qua this land also, the petitioner refused to get the sale deed registered in favour of the complainant.

The complainant's complaint before lodging of the FIR in question was enquired into by the Deputy Superintendent of Police, Sub Division, Dhar Kalan, Pathankot, who found the allegations made by the complainant to be true. The inquiry revealed that the owners of the land for which payments have been made by the complainant to the petitioner had neither received any money from the petitioner nor had they ever expressed their desire to the petitioner to sell their lands. The enquiry further found that the petitioner had given to the complainant cheques worth ₹67.40 lakhs, which were dishonoured and that the petitioner was not found to be owner of either of the two properties referred to above.

Seeking anticipatory bail for the petitioner, learned counsel submits that the petitioner has falsely been implicated in the case; the dispute reflected in the FIR is of civil nature; the matter is based only on documentary evidence and that no recovery is to be made from the petitioner.

In support of her case, learned counsel has relied upon the following paragraphs of the judgment of the Apex Court in **Siddharam Satlingappa Mhetre vs. State of Maharashtra and others – (2011) 1 Supreme Court Cases 694.**

> *"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat

to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

Learned counsel has also relied upon the following paragraphs of the judgment of the Apex Court in **Arnesh Kumar vs. State of Bihar and another – (2014) 8 Supreme Court Cases 273.** They read as under:-

"5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of

police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

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12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine."

In **Siddharam Satlingappa Mhetre's case (supra)**, the Apex Court has laid down the parameters to be taken into consideration while dealing with petitions seeking anticipatory bail. The Apex Court has further held that arrest should be the last option and it should be restricted to those cases where arresting the accused is imperative in the facts and circumstances of the case.

Applying the above ratio to the facts of the case in hand, there is no manner of doubt in my opinion that the allegations against the petitioner are grave. His conduct is also such for which his custodial interrogation is warranted.

As noticed earlier, before lodging of the FIR, the complaint made by the complainant was enquired into by a DSP, who found that the petitioner was a property dealer; for selling of two tracts of land to the complainant he had fraudulently accepted from him over ₹70 lakhs; he was found not to be the owner of either of the two tracts of land; such money was also not passed on by the petitioner to the actual owners and in discharge of his liability, the petitioner gave to the complainant several cheques cumulatively for an amount of more than ₹64 lakhs which, on presentation were all dishonoured.

From the above gamut of facts, it is revealed that the petitioner allegedly committed repeated acts of dishonesty one after the other throwing light on his conduct. The petitioner is a property dealer. Whether he has committed similar frauds with others needs to be probed. The amount of money which allegedly has changed hands is a huge amount of over ₹70 lakhs. As this amount has not been refunded, it needs to be recovered and the money trail is to be established. If other persons were involved also needs to be enquired into.

In **Arnesh Kumar's case (supra)**, it was laid down by the Apex Court that in cases where the offence for which FIR is lodged is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, the investigating agency should show reason to arrest the accused. In the case in hand before the FIR was lodged, a DSP had enquired into the allegations made by the complainant and found substance in the same. During the course of such enquiry, the petitioner was also associated.

Dismissed.

(DEEPAK SIBAL)
JUDGE

April 06, 2017
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(i) Whether speaking/reasoned Yes/No
(ii) Whether reportable Yes/No