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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: August 09, 2017
CRM-M-9452 of 2017 (O&M)

Anand Kumar Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CRM-M-14249 of 2017

Manjit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CRM-M-14831 of 2017

Baljinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CRM-M-16043 of 2017

Sukhwinder Jit Sodhi

.....Petitioner

Versus

State of Punjab

.....Respondent

CRM-M-17640 of 2017

Daljit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CRM-M-18530 of 2017

Parvinder Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. K.S. Khehar, Advocate
for the petitioner (in CRM-M-9452 of 2017).

Mr. J.S. Bedi, Senior Advocate with
Mr. L.S. Chahal, Advocate
for the petitioner (in CRM-M-14249 of 2017).

Mr. K.D.S. Sodhi, Advocate
for the petitioner (in CRM-M-14831 of 2017).

Mr. Kirpal Singh, Advocate
for the petitioner (in CRM-M-16043 of 2017).

Mr. Sanjeev Pandit, Advocate
for the petitioner (in CRM-M-17640 of 2017).

Mrs. Baljit Mann, Advocate
for the petitioner (in CRM-M-18530 of 2017).

Mr. Sidakmeet Singh Sandhu, Addl. AG Punjab.

Mr. M.S. Khaira, Senior Advocate with
Mr. Dharminder Singh, Advocate and
Mr. D.S. Randhawa, Advocate for the complainant.

A.B. CHAUDHARI, J (Oral)

By this common order, above said all six petitions are being disposed of.

These six petitions for grant of anticipatory bail have been filed by the Government servants attached to the land acquisition section for acquisition of land for construction of Highway NH-3, Jalandhar to Chintapurni Project under National Highways Act, 1956 (for short 'NH Act'), arising out of FIR No.01 dated 10.02.2017, under Sections 409, 420, 467, 468, 471, 120-B of Indian Penal Code, 1860 (for short 'IPC') and Sections 13(1)(d), 13(2) of Prevention of Corruption Act, 1988 (for short 'PC Act'), registered at Police Station Economic Wing, Ludhiana, District Ludhiana.

Petitioner-Anand Kumar Sharma (in CRM-M-9452 of 2017) was designated as a competent authority being SDM-cum-Collector, Hoshiarpur for the purposes of land acquisitions for four laning road.

The land from the villages of Hoshiarpur, Naloia, Bassi Janna and Chouhali and so and so forth measuring 103 acres was to be acquired. Manjit Singh is the petitioner in CRM-M-14249 of 2017 who was the then Naib Tehsildar, Hoshiarpur. Baljinder Singh is the petitioner in CRM-M-14831 of 2017 who was posted as Tehsildar, Hoshiarpur. Sukhwinder Jit Sodhi is the petitioner in CRM-M-16043 of 2017 who was working as a Clerk in DC Office, Hoshiarpur. Daljit Singh is the petitioner in CRM-M-17640 of 2017 who was working as a Halka Patwari of Khwaspur. Parvinder Kumar is the petitioner in CRM-M-18530 of 2017 who was working in the office and allegation is that he had filled the proforma showing the land to be unauthorized colony with the rate of ₹3.5 lakhs per marla. The sum and substance of the First Information Report after culling it down shows that Anand Sagar Sharma acting as a competent authority passed the award and under the award extra compensation was given in respect of the unauthorized colonies. That after issuance of notification under Section 3-A of the NH Act, there can be no further transfers of lands proposed to be acquired. Property dealers in connivance with all these petitioners purchased the lands from the owners even after issuance of said notification, by registration of sale-deeds and for that all these petitioners conspired. That the types of lands were changed and were shown as commercial and accordingly, compensation that was awarded was for the lands as commercial. The compensation under the award was ordered to be paid to the new owners who were not so entitled to after the publication of notification under Section 3-A of the NH Act. The rate of compensation

given could not have been given on commercial basis or at the rate that was given under the award. In short, the above is the sum and substance of the prosecution allegations.

The State has filed reply by way of affidavit of Ashwani Kumar, PPS, Deputy Superintendent of Police, Vigilance Bureau EOW Unit No.3, Jalandhar. I quote the relevant portion from the reply by way of affidavit as to the illegalities allegedly committed by these petitioners as found by the SIT:-

“i) Construction of new road from Jalandhar to Chintpurni under National Highway Act against Notification (3-a) dated 12.11.2014 in which S.D.M.-Cum-Collector, Hoshiarpur, has been appointed as competent authority to acquire the land in the area of District Hoshiarpur.

ii) Notification (3-A) was issued on 24.06.2015 in which Khasra Numbers and type of land to be acquired was published. S.D.M. Sahib was ought to stop the sale and purchase of land of these Khasra numbers which was not done.

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vi) Land owners of village Khuvaspur and Hardokhan Pur were required to be given amount of compensation as per type of Khasra numbers published in Notification (3-D) and (3-G), but in this case land owners of Village Khuvaspur and Hardokhan Pur have been disbursed amount of compensation at commercial rate as per entry made in Variation Certificate.

Vii) After Notification (3-G) objections which were received from land owners for giving market rate are attached with record. In order to fulfill the demand S.D.M.

Sahib on dated 09.01.2016 went to different villages and visited the spot regarding which Rapat are entered in the Roz Namcha of Patwaris. At that time in order to determine market rate proof in the shape of old sale deeds or agreements etc. are not attached with record and statements of General Public at the spot stating market rates were not recorded. Only on the basis of Dasti Report of Patwaris type of land has been changed.

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x) S.D.M. Office on dated 27.04.2016 prepared Schedule regarding rates of different villages and sent to concerned Patwaris, but in record documents which are registered in May-June 2016, amount of compensation have been disbursed to new owners in which clearance is required to be taken from concerned officers of Revenue Department.”

Finally, it is stated in the reply by way of affidavit that many documents can be taken into possession only after the custodial interrogation, and therefore, the plea for grant of anticipatory bail to all the petitioners was opposed.

Heard learned counsel for the rival parties at length including the learned counsel for the complainant.

This Court had granted stay of arrest to all the petitioners on various dates in respective petitions. Thereafter, on 09.05.2017 (in CRM-M-9452 of 2017), this Court had made an order appointing Sh. H.N. Sahu, Advocate as local commissioner. The said local commissioner has submitted his report along with photographs and video CD etc. before this Court. The conclusion drawn by the local commissioner is reproduced below:-

“Conclusion:-

As per spot inspection and perusal of the revenue record, the above said colonies with constructions and base foundations were in existence before the award passed by the competent authority for land acquisition but the updation of the revenue record was not done and in Variation Certificate, i.e. summary statement of change of nature of land and type of land, in the column of nature of land, gair mumkin colonies are shown before Section-3(D) Notification, i.e. before the passing of the award, which was duly approved by Superintending Engineer, Central Works NH Circle, Punjab (B&R). Hence, in view of the above, the competent authority for land acquisition announced the award on the basis of the nature of the land in existence and average sale deeds of plots for residential and commercial purposes at the time of passing the award.

Note: Photographs and Video C.D. are enclosed herewith.”

The first ground raised by the State for opposing the petitions for anticipatory bail to the petitioners about the recovery of documents does not appeal to me since the entire record is Government record and has to be available in Government offices concerned. It is not the allegation in the reply by way of affidavit by the prosecution that any of these petitioners have taken away the Government record with them. I, therefore, reject the said contention that for recovering documents custody is required.

The objection raised by the State that the sale-deeds could not have been registered after publication of the notification with the original owners on the date of notification is a matter of provision of law.

If despite issuance of notification, the sale-deeds were registered; such sale-deeds become *void ab initio* and do not confer any ownership right on the transferees. The prosecution allegation that all these petitioners had, in collusion with the property dealers and others, got the sale-deeds executed after the publication of notification and that the disbursement of compensation was made to such transferees has not been at all established by any evidence before this Court despite several opportunities granted to the prosecution. Adjournments were sought and even on the date of hearing, learned State counsel was asked to show any evidence that the transferees post issuance of notification were given the compensation under the award. Even if these allegations are true the arrest of any of the petitioners is not necessary. But if the petitioners have really awarded and disbursed compensation to the transferees post issuance of notification, then the same would be a matter of serious concern and may attract penal provisions. But then arrest of the petitioners is not necessary on this ground. As stated earlier, as on date, no material has been produced before this Court to show that under any award, transferees post notification were awarded any compensation.

The FIR shows the allegations about type of land or non-existent status of the land for awarding higher compensation on the basis of commercial rates. The issue has become debatable particularly in the light of the conclusion drawn by the local commissioner appointed by this Court, which has been quoted above. Even if the prosecution allegations are true about award of compensation wrongly or illegally on the basis of commercial rates, the arrest of any of the petitioners is not

caller for. But the investigation in the crime may continue and the petitioners may be tried in the criminal trial ultimately.

Learned State counsel as well as learned counsel for the complainant vehemently argued that disbursement of compensation to the persons who were not entitled to the compensation in the sense that the properties were purchased by them post notification is an act of serious misconduct on the part of the petitioners, may be appealing, but then, in my opinion, the refusal of anticipatory bail would serve no purpose in that eventuality.

As observed earlier, this Court finds for the purpose of consideration of petitions for anticipatory bail that there is no requirement of arrest since all the documents can be recovered by the investigating agency from the concerned offices. However, it would be necessary for the State of Punjab to proceed to find out, in addition to the criminal case, whether departmental enquiry in the matter of allegations leveled in the FIR against all the concerned Government servants should be held and if amount of compensation has been actually paid to the transferees post issuance of notification under Section 3-A of the NH Act and the original owners were deprived of, steps to attach the property of concerned Government servants could also be taken. There cannot be any doubt that no award directing disbursement of compensation to the transferees of the acquired properties post first notification could at all be made or the compensation could be disbursed to such persons. This Court, therefore, expects the State of Punjab to look into this aspect of the matter.

To conclude, this Court finds that the arrest of the petitioners in all these petitions is not necessary and would serve no purpose. Hence, imposing conditions on the petitioners for being asked to join the investigation, this Court makes the following order:

ORDER

- (i) The petitioners in all these petitions shall be released on anticipatory bail on their furnishing bail bonds amounting to ₹10,000/- with one surety of like amount, subject to the satisfaction of the arresting officer;
- (ii) Petitioners shall join investigation as and when required;
- (iii) Petitioners shall not tamper with the prosecution evidence, threaten or exercise any influence on the prosecution witnesses;
- (iv) Petitions stand disposed of, accordingly.

(A.B. CHAUDHARI)
JUDGE

August 09, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No