

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

**Criminal Misc. No. M-13735 of 2018 (O&M)
Date of decision: 03.12.2018**

O.P. Chhabra

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana
for the respondent-State.

Mr. Gurinder S. Sandhu, Advocate
for the complainant.

Daya Chaudhary, J.

The present petition has been filed by petitioner-O.P. Chhabra under Section 438 Cr.P.C. for grant of anticipatory bail to him in case FIR No.85 dated 04.02.2018 registered under Sections 420, 467, 468, 471, 506 IPC at Police Station Sadar Gurugram.

Learned counsel for the petitioner submits that original allottee of House No.177 was Raghubir Singh, who entered into an agreement to sell in favour of the petitioner. Full payment was made and possession was also delivered. A Will was executed by the original allottee on 26.08.1992 besides executing indemnity bond. Thereafter, original allottee filed a petition for ejectment against the petitioner, which was dismissed on 05.05.2001 by the Rent Controller. Thereafter, original allottee sold the property to one Mukesh Kumar, who also filed an ejectment petition against

the petitioner in the year 2007 and the same was dismissed on 31.03.2010. Said Mukesh Kumar further sold the property to the complainant, who has alleged forgery of original documents, which were executed in favour of original allottee-Raghubir Singh.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and also submits that the petitioner has joined investigation but has not cooperated in the investigation. Even in the written questionnaire, the petitioner has responded vague reply. The petitioner has not produced any document to show his right over the ownership of the property in dispute. The signatures on the documents were sent for comparison but the same were not found to be of the original allottee of the property in dispute.

Learned counsel for the complainant has also reiterated the arguments raised by learned State counsel.

Heard arguments of learned counsel for the petitioner, learned State counsel as well as counsel for the complainant and have also perused the contents of the FIR and other documents available on the file.

While issuing notice of motion on 04.04.2018, the petitioner was directed to join investigation and thereafter, various dates were given to the petitioner to join investigation and to cooperate in the investigation. The petitioner joined investigation but he did not cooperate in the investigation. As per allegations levelled against the petitioner, the complainant was owner of the property in dispute and the petitioner was tenant. The petitioner fabricated forged documents viz-a-viz agreement to sell, receipts and indemnity bond by impersonating Raghubir Singh, the original

allottee/owner. When complainant asked for possession of the property, the petitioner threatened him of elimination of his entire family.

As per case of the petitioner, the documents are genuine and the same has been affirmed by the Rent Controller vide judgment dated 05.05.2001 whereas the suit was decreed ex parte and it was not filed by Raghubir Singh. No notice was received by the complainant. Even said Raghubir Singh never appeared before the Rent Controller at any point of time and even at the time of tendering of rent of ₹16,276/- by the petitioner. Even that litigation was never in the knowledge of Raghubir Singh and the same was never contested.

On receipt of FSL report dated 31.05.2018, the documents of the property were found to be forged and fabricated as the signature on the agreement to sell were not tallying with the signature of the complainant. The petitioner has denied the relationship of landlord and tenant. In case there was no relationship of landlord and tenant, the question of payment of rent does not arise. The petitioner even did not make any effort to get his title over the disputed property by way of execution or registration of sale deed in his favour from the complainant.

The report of handwriting expert dated 18.12.2000 produced by the petitioner in the rent proceedings under exparte judgment dated 05.05.2001 proves that previous suit titled as 'Raghubir Singh vs. O.P. Chhabra' was also instituted by the petitioner himself in the name of said Raghubir Singh as signatures of said Raghubir Singh tallied with the signatures of the petitioner. Even before this Court at the time of hearing of the present petition, the petitioner was asked through counsel to produce

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any document to show his right over the property in dispute but he is not in a position to show any document.

Hon'ble the Apex Court in number of judgments has made a distinction in custodial and non-custodial interrogation and the consequent result of the investigation. There is a perceptible difference in the results of interrogation when a person who has an order of anticipatory bail in his pocket and goes to the investigating agency. Under such circumstances, he does not cooperate with the investigating agency and does not want to give correct answer to the questions put to him by the Investigating Officer to reach at the bottom of the case as against the person who is in custody or who does not have protection of anticipatory bail. Same view has been held by Hon'ble the Apex Court in cases ***State Vs. Anil Sharma AIR 1997 SC 3806*** and ***Muraleedharan Vs. State of Kerala AIR 2001 SC 1699***.

It is a well settled law that anticipatory bail cannot be claimed as a matter of right but it is a concession and the same is to be granted by considering various factors. For grant of anticipatory bail, the nature, gravity of offence as well as role of the accused is to be seen. There are certain factors, which are to be considered while granting bail under Section 438 Cr.P.C. Hon'ble the Apex Court in a judgment rendered in ***Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another 2015 (8) JT 125*** has summarized certain factors to be taken into consideration while granting anticipatory bail, which are reproduced as under:

“The principles which can be culled out, for the purposes of the instant case, can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the

complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or

postconviction stage.

(iv) There is no justification for reading into Section 438 Cr.P.C. the limitations mentioned in Section 437 Cr.P.C. The plenitude of Section 438 must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 Cr.P.C. to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be

exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 Cr.P.C. should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

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

(b) 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;

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

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

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

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

(g) 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 overimplication in the cases is a matter of common knowledge and concern;

(h) 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) 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

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the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

By considering the nature of allegations and role of the petitioner and also the fact that the petitioner has not cooperated in the investigation as neither the documents nor the relevant information has been supplied in spite of giving various opportunities, I find that anticipatory bail is a relief, which is not to be granted in a routine manner but under the exceptional circumstances. A person approaching the Court for such relief must come with clean hands discussing all the facts without any concealment. In the present case, the petitioner was asked time and again to join investigation and interim order was also passed in his favour but still he did not cooperate in the investigation.

For the reasons as mentioned above and keeping in view the totality of circumstances explained above, I am of the view that it is not a fit case where the petitioner is entitled for anticipatory bail. Custodial interrogation is required for reaching at the bottom of the nexus to unearth modus operandi adopted by the accused in forging documents etc. The present petition being devoid of any merit is, hereby, dismissed.

03.12.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No