S.No.107

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-7623 of 2019 (O&M)
Date of Decision:20.02.2019

Amarjit Singh .....Petitioner

Vs.

State of Punjab .....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Arvind Kashyap, Advocate
for the petitioner.

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<u>Rajbir Sehrawat, J.(Oral)</u>

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.07 dated 11.01.2019 registered under Sections 420/406/465/467/468/471 IPC at Police Station Bassi Pathana, District Fatehgarh Sahib (Punjab).

The allegations mentioned in the FIR are that the petitioner had committed a fraud upon the Bank and obtained a loan amounting to Rs.16 lakhs. For obtaining this loan, the petitioner had submitted a fake jamabandi showing his ownership over 97 kanal 5 marlas of land. When the loan money was not repaid by the petitioner, then the properties were sought to be verified by the Bank for putting the same on sale. However, it was found that out of total land shown as mortgaged with the Bank, the petitioner was not even owner of the land measuring 66 kanal 3 marlas. The fake jamabandi produced by the petitioner, purportedly; bore the fake signatures of revenue officials. On the basis of this jamabandi, the land was shown as mortgaged with the Bank. Accordingly, the fraud committed by the petitioner was detected.

Arguing the case for the petitioner, learned counsel for the petitioner has submitted that even if the jamabandi submitted by the petitioner is alleged to be fake by the Bank, still as per the verification done by the Bank again, the petitioner is found to be owner of at least 16 kanals of land. This 16 kanals of land is worth value more than the loan amount. Hence, the Bank can recover this amount from the security of 16 kanals of land. It is further contended by counsel for the petitioner that one Gurdhian Singh was the agent of the Bank. It is he, who, along with the then bank officials, forged and fabricated all the documents; which were attached with the loan application of the petitioner. These documents are shown to have been verified by the then Field Officer as well. Hence, the petitioner alone cannot be blamed for this forgery.

Having heard learned counsel for the petitioner and perusing the file, this Court does not find any substance in the argument raised by learned counsel for the petitioner. It is not even disputed that the petitioner has obtained the loan of Rs.16 lakhs as mentioned in the FIR, by mortgaging his land. The jamabandi pertaining to the land of the petitioner, which also included the land of other persons qua which also the petitioner was shown as owner, has been submitted to the Bank for securing that loan. The petitioner has defaulted in payment of the loan as well. Reverification of the facts has found that the petitioner is owner of only 16 kanals of land and not 97 kanal 5 marlas of land, as mentioned in said jamabandi. Hence, it is obvious that the ownership of the land was inflated by or in collusion with the petitioner.

Of course, the then officials of the Bank also appear to be involved in this forgery, however, that would not absolve the petitioner of his culpability qua the loan transaction. The fact that the Bank can still recover the loan amount by selling the remaining 16 kanals of land, of which the petitioner has been found to be owner, also does not wash out the offence already committed by the petitioner.

Of course, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

However, in view of the facts and circumstances mentioned above, this Court does not find any mitigating circumstances to lead this Court to exercise its power under Section 438 Cr.P.C. The facts, as mentioned in the FIR, do, prima facie, indicate the participation of the petitioner in the fraud. The petitioner is also beneficiary of the alleged fraudulent transaction, so it cannot be said that the petitioner is, ex facie, innocent. Still further, if the petitioner is protected against the arrest, then the investigation of the case would be unduly hampered. The police would not be able to decipher the scope and dimension of the alleged crime.

In view of the above, but without commenting any further on merits of the case, the present petition is dismissed.

However, it is clarified that nothing observed in this order, shall have any bearing on merits of the case, for the purpose of any other proceedings.

February 20, 2019 **(RAJBIR SEHRAWAT)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No