

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 10.07.2019

1. CRM-M-42431-2018 (O&M)

Kulwant Singh

....Petitioner

Versus

State of Punjab

....Respondent

2. CRM-M-53273-2018 (O&M)

Bishan Singh

....Petitioner

Versus

State of Punjab

....Respondent

3. CRM-M-14353-2019 (O&M)

Dharam Kaur and another

....Petitioners

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S. Punia, Sr. Advocate with
Mr. P.S. Punia, Advocate
for the petitioner (in CRM-M-42431-2018).

Mr. M.S. Sarao, Advocate
for the petitioner (in CRM-M-53273-2018).

Mr. Alok Mittal, Advocate
for the petitioner (in CRM-M-14353-2019).

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Aman Pal, Advocate and
Ms. Aashna Gill, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in all these petitions is for grant of anticipatory bail to the petitioners in FIR No.103 dated 07.09.2018 under Sections 420, 167, 120-B IPC, registered at Police Station Julkan, District Patiala.

On 04.10.2018, while granting interim anticipatory bail to petitioner Kulwant Singh, following order was passed in CRM-M-42431-2018: -

“.....As per the allegations in the FIR, on 15.01.2018, complainant Surjit Singh, submitted an application, on which an enquiry was conducted by Deputy Superintendent of Police (Rural), Patiala, against one Hardev Singh, Kulwant Singh-petitioner, three revenue officials namely Amarjit Singh Sodhi-Patwari, Bishan Singh-Kanungo and Sarup Chand-Naib Tehsildar.

As per the allegations, the complainant-Surjit Singh and his brother Bhupinder Singh had purchased 30 bighas and 4 biswas of land from co-accused Hardev Singh, vide three sale deeds dated 20.05.1999, 25.05.1999 and 28.05.1999. It is stated that as per the jamabandi for the year 1993-94, Hardev Singh was owner in possession of the aforesaid land and while

purchasing the same, the complainant had taken consent from Dev Singh and his son, who did not raise any objection. Later on, it came to the notice of the complainant that aforesaid Dev Singh (father of the petitioner) by presenting a fake decree of land measuring 1/6th share of 362 bighas and 17 biswas, in the name of Hardev Singh as well as the petitioner i.e. 30 bighas and 4 biswas each, got a mutation sanctioned on the basis of the same in the year 1992, whereas, the Civil Court, vide judgement dated 04.12.1987 had in fact, dismissed the suit filed by Hardev Singh and Dev Singh qua this land and by preparing a fake decree showing that the suit was decreed, the aforesaid land was transferred by mutation and was later on incorporated in the jamabandi. It is further stated in the FIR that after the land was purchased and possession was given to the complainant, then Dev Singh and his three sisters challenged the three sale deeds by way of filing a civil suit against the complainant and his deceased brother Bhupinder Singh. Vide judgement and decree dated 30.04.2013, the said suit was decreed by Civil Judge (Jr.Division), Patiala. The appeal filed by the complainant and his brother was dismissed by Additional District Judge, Patiala, vide judgement and decree dated 17.11.2017. Thus, all the accused persons in conspiracy with each other have cheated the complainant.

Learned counsel for the petitioner submits that at the

time of the passing of the decree dated 22.08.1987 as well as on the date of sanctioning of the mutation on 21.07.1992 the petitioner-Kulwant Singh was a minor being his date of birth as 12.07.1975. It is further stated that even as per the date of birth stated by the complainant i.e.14.04.1972, the petitioner was a minor on the date of passing of the aforesaid decree dated 22.07.1987.

It is further argued that the petitioner is not a signatory to the three sale deeds, vide which the co-accused Hardev Singh had sold land in favour of his brother and the complainant. Therefore, the petitioner had not committed any fraud with the complainant.

It is further argued that on the date when Dev Singh and his sisters filed Civil Suit No.769 dated 07.06.1999, it came to the notice of the complainant that the decree dated 22.07.1987 is a fake decree. However, the present FIR has been filed after more than 25 years and in the intervening period, the complainant had lost the case before the Civil Court.

Learned Senior counsel for the petitioner has relied upon certain documents Annexures P2 to P4 to show his date of birth and relied upon the finding recorded by the Additional Sessions Judge, Patiala, in the civil appeal i.e. “Dev Singh and others vs. Bhupinder Singh and others” to submit that though in the appeal, the Court has dispensed with the service of

petitioner and aforesaid Hardev Singh, yet the Additional Sessions Judge, Patiala, has recorded a finding that it was Hardev Singh, who had knowledge about dismissal of the civil suit and got entered and sanctioned the mutation in his favour and executed three sale deeds in favour of complainant party. It is thus argued on behalf of the petitioner that the petitioner is ready to join the investigation and hand over all the documents showing his date of birth as well as to show that he is not a beneficiary of the aforesaid three sale deeds got executed by co-accused Hardev Singh.

Learned State counsel, on instructions from the Investigating Officer, assisted by learned counsel for the complainant has however, opposed the prayer for grant of anticipatory bail.

It is submitted by learned State counsel that during the enquiry conducted by the Deputy Superintendent of Police, it is found that the decree dated 04.12.1987, was found to be a fake document, on the basis of which the mutation was sanctioned by the revenue officials and later on, the entries were carried forward in the jamabandi for the year 1993-94, and, therefore, the petitioner along with co-accused Hardev Singh have committed a fraud with the complainant.

Learned counsel for the complainant has submitted that in the original suit filed by the petitioner-Kulwant singh and

Hardev Singh, it is nowhere mentioned that the petitioner was minor in the year 1987 and Hardev Singh has deposed that he is living like a family member of Dev Singh and his sisters. Learned counsel has further argued that knowingly that the suit was decreed by preparing a fake decree showing that the accused, in conspiracy with each other for getting the mutation sanctioned and believing the same to be correct, the complainant party has purchased the land which as per the record was in the name of co-accused Hardev Singh. Learned counsel has further submitted that even in the suit filed by Dev Singh, challenging the aforesaid three sale deeds, it is stated that the petitioner was in collusion with Hardev Singh and other revenue officials in getting the mutation sanctioned on 28.07.1992, which shows the collusion between them. Learned counsel has further argued that the Regular Second Appeal filed by the complainant party is pending before this Court, in which stay has been granted in his favour.

In reply, learned Senior Counsel for the petitioner submits that a perusal of the mutation No.699 dated 21.07.1992, which was sanctioned on the basis of fake decree, shows that it was passed in presence of Dev Singh being the responsible person on behalf of the petitioner Kulwant Singh which shows that in fact it was Dev Singh, who was acting on behalf of the petitioner and no active role of the petitioner is

proved, who was otherwise a minor.

After hearing learned counsel for the parties, I find that at this stage, it is not a case for custodial investigation as the same is based on documents. During the investigation, the police is yet to ascertain as to whether on the date of the fake decree dated 04.12.1987, or on the date of sanction of mutation dated 21.07.1992, the petitioner was a minor or not. As per the FIR, the petitioner is not a signatory to the three sale deeds, which are executed by co-accused Hardev singh and, therefore, it cannot be said, at this stage, that he was a beneficiary, as the land falling to his share as per the fake decree and the mutation was later on set aside in the civil suit filed by Dev Singh and his sisters.....”

Learned senior counsel for petitioner Kulwant Singh has reiterated the arguments, as noticed in the aforesaid order dated 04.10.2018.

It is argued on behalf of petitioner Bishan Singh that he was Kanoongo at the relevant time and had no knowledge that the decree was fake. It is also argued that he has retired 20 years ago and presently, is aged about 83 years and is not a beneficiary in any manner.

Learned counsel for petitioners Kulwant Kaur and Dharam Kaur have argued that they are senior citizens and have no role and rather they are also cheated by co-accused Kulwant Singh and Hardev Singh, as they have taken their shares by forging a fake decree dated 04.12.1987 and when both these petitioners came to know about the same, especially the

alienation made in favour of the complainant, they had filed a suit.

In reply, learned State counsel, on instructions from the Investigating Officer, has however submitted that petitioner Kulwant Singh is not cooperating in the investigation, as he has failed to hand over the original fake decree, on the basis of which he along with co-accused Hardev Singh succeeded in obtaining a wrong mutation. It is further submitted that co-accused Hardev Singh was arrested and later on, he was granted regular bail and since the petitioner is not cooperating, his custodial interrogation is required, as he is one of the beneficiary of fake sale deed, on the basis of which he got the mutation sanctioned and later on, co-accused Hardev Singh executed a sale deed in favour of the complainant, which was subsequently set aside by the Civil Court, as the decree dated 04.12.1987 was found to be a fake decree. Learned State counsel has further argued that on inquiry, it was found that petitioner Kulwant Singh was not minor at the time of preparation of fake decree.

In reply, learned senior counsel for petitioner Kulwant Singh has argued that in fact sale deeds were executed by Hardev Singh, however, he could not dispute that during the investigation, the petitioner has not handed over the original fake decree to the police.

Learned counsel for the complainant has opposed the prayer for anticipatory bail on the ground that when the civil suit was filed by the petitioner and his maternal uncle Hardev Singh, claiming themselves to be owners of the property, held by Dev Singh, father of present petitioner Kulwant Singh, two other co-accused Dharam Kaur and Kulwant Kaur had

made a consenting statement in the said suit in favour of petitioner Kulwant Singh that they have no objection if the suit is decreed, however, the trial Court dismissed the suit on 04.12.1987. Both petitioner Kulwant Singh and co-accused Hardev Singh prepared a fake decree showing that the suit, which was in fact dismissed, to be decreed and succeeded in getting the mutation No.699 of the estate of Dev Singh sanctioned in their favour on 21.07.1992, ousting the share of co-accused Kulwant Kaur and Dharam Kaur. It is further argued that the complainant, on verifying the record and finding that co-accused Hardev Singh has become owner of the property, purchased the property vide sale deeds dated 20.05.1999, 25.05.1999 and 28.05.1999, i.e. total measuring 30 bighas of land. Before purchasing the land, on verification of the record, it was found that mutation No.699 was executed on the basis of decree on 28.07.1992 in favour of Kulwant Singh and Hardev Singh, they even obtained loan from the bank by mortgaging some of the land and only thereafter, the complainant, after due verification, purchased the property, co-accused Hardev Singh. Later, Kulwant Kaur and Dharam Kaur had challenged the same, by filing a suit in June, 1999 and ultimately, the suit was decreed, as the decree set up by petitioner Kulwant Singh and co-accused Hardev Singh was found to be a fake decree.

Learned counsel for the complainant has further argued that both these accused persons have taken loan three times in 1999, 2010 and 2017 and were using the fake decree as genuine and therefore, the petitioner has committed the offence in conspiracy with Hardev Singh, knowingly that the decree dated 04.12.1987 is fake. It is further argued that possession of

the land was handed over to the complainant in pursuance of two agreements to sell dated 03.12.1998 and 03.01.1999, which was followed by execution of 03 sale deeds by Hardev Singh and the very fact that the suit for declaration challenging the sale deeds in favour of the complainant was filed by two co-accused Kulwant Kaur and Dharam Kaur within a period of one week of execution of the sale deeds, it shows that from the date of mutation i.e. 28.07.1992 till 1999, both co-accused Kulwant Kaur and Dharam Kaur (plaintiffs in the civil suit) were a consenting party with accused Kulwant Singh and Hardev Singh and therefore, they are also part of the conspiracy.

Learned counsel for the complainant has next argued that there is no delay in registration of the FIR, as the complainant was pursuing his remedy before the Civil Court and finding that it is a case of conspiracy between all the accused persons, the present FIR has been registered. It is further argued that the police has conducted a detailed inquiry, in which it was found that Kulwant Singh was major at the time of decree dated 04.12.1987 and this report is based on his birth certificate, PAN card, matriculation certificate and other documents. Learned counsel has further argued that as per the report (Annexure R-12), a detailed inquiry was conducted by DSP (Rural), Patiala before registration of the FIR and after conducting the inquiry, it was recommended that an FIR be registered against the accused persons. It is next argued that though petitioner Kulwant Singh has not sold the land to the complainant, however, Hardev Singh is real maternal uncle of petitioner Kulwant Singh and both of them, in

conspiracy with each other, have succeeded in getting a fake decree mutated in their favour and believing the same to be correct, the complainant was allured to purchase 30 bighas of land, which he lost in the civil proceedings and therefore, on the face of it, offences under Sections 420, 467, 468, 471, 167, 120-B IPC are made out.

After hearing learned counsel for the parties, I find merit in the petitions i.e. CRM-M-53273-2018 and CRM-M-14353-2019, filed by Bishan Singh, Dharam Kaur and Kulwant Kaur, respectively, however, I do not find any merit in the petition filed by petitioner Kulwant Singh i.e. CRM-M-42431-2018, for the following reasons: -

(a) While granting interim anticipatory bail, the contentions on behalf of petitioner Kulwant Singh were recorded that he was minor at the time of fake decree dated 04.12.1987, on the basis of which, mutation No.699 dated 28.07.1992 was sanctioned, however, as per the police inquiry report, he was not minor.

(b) The complainant has placed on record the documents showing that despite the knowledge of the petitioner that decree dated 04.12.1987 as well as subsequent mutation are fake, he was mortgaging the property mutated in his favour, for raising loan from the bank from time to time.

(c) It is own case of the petitioner that when the suit was filed by Kulwant Kaur and Dharam Kaur, the Civil Court has recorded a finding that this decree dated 04.12.1987 and mutation No.699 dated 28.07.1992 are fake and therefore, while preparing the said fake decree, he was in conspiracy with co-accused Hardev Singh, his real maternal uncle (mama),

who was arrested and later on, was granted regular bail.

(d) The argument of learned senior counsel for the petitioner that the petitioner is neither a signatory nor a witness to the sale deed in favour of the complainant, has no force, as the allegations are regarding preparation of a fake Civil Court decree dated 04.12.1987 and subsequent mutation No.699, which was entered on the basis of same, on 28.07.1992 and therefore, the petitioner along with co-accused Hardev Singh, both being beneficiaries of these fake documents, have prima facie committed an offence punishable under Sections 420, 467, 468, 471 IPC.

(e) Learned counsel for the complainant has stated that in the civil suit filed by Kulwant Kaur and Dharam Kaur, petitioner Kulwant Singh intentionally opted to be proceeded ex-parte, as he knew that the decree is fake and for this reason, he opted not to contest the suit to avoid a finding from Civil Court about his age, which also shows that he, in conspiracy with Hardev Singh, has forged the documents.

(f) The mere fact that FIR has been registered after dismissal of the appeal by the Additional Sessions Judge, does not absolve the petitioner from the offence, which he prima facie committed, in conspiracy with co-accused Hardev Singh, especially in view of the fact that subsequently, he was raising loan vide documents (Annexures R-5 to R-11) and was taking benefit of said fake decree and mutation.

Therefore, considering the objection raised by learned State counsel that the petitioner is not cooperating in the investigation and has failed to hand over original fake decree to the Investigating Officer and also

in view of the gravity of offence committed by petitioner Kulwant Singh, I find no ground to grant anticipatory bail to him.

In view of the above, CRM-M-42431-2018 filed by petitioner Kulwant Singh, praying for grant of anticipatory bail is dismissed and the order dated 04.10.2018, granting interim anticipatory bail stands vacated. However, CRM-M-53273-2018 and CRM-M-14353-2019 filed by co-accused Bishan Singh, Dharam Kaur and Kulwant Kaur respectively are allowed and the order dated 03.12.2018 passed in CRM-M-53273-2018 and the order dated 04.04.2019 passed in CRM-M-14353-2019, vide which interim anticipatory bail was granted, are made absolute subject to the conditions envisaged under Section 438 (2) Cr.P.C.

[ARVIND SINGH SANGWAN]
JUDGE

10.07.2019
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No