

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.203

CRM-M-45661-2018 (O&M)

Date of decision : 21.2.2019

Geeta Utreja

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rakesh Chopra, Advocate, for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab

Mr. Rajiv Joshi, Advocate, for the complainant.

SUDHIR MITTAL, J. (Oral)

The petitioner seeks anticipatory bail in case FIR No.266 dated 11.11.2017, registered at Police Station Sadar Patiala, under Sections 406/420/120-B IPC. It may be noted that this is the second petition for grant of anticipatory bail, earlier, one having been dismissed on merits vide order dated 6.3.2018 (Annexure P-13) passed in CRM-M-6901-2018.

2. According to FIR, the petitioner, her father, one Arvind Singla and Randhir Singh are the accused. It is alleged that the father of the petitioner installed a cold store in partnership with one Satnam Singh Hasija and also executed an agreement to purchase land adjoining the cold store, owned by sarv shri Pardeep Singh and Jagtar Singh. Before commencement of construction of the cold store a dispute arose between the father of the petitioner namely Mohinder Singh Utreja and aforestated Satnam Singh Hasija. The matter was ultimately compromised and Satnam Singh Hasija withdrew from the partnership by executing a dissolution deed in writing. Thereafter, one Maninder Sharma invested Rs.63.5 lakhs in the cold store partnership and Mohinder Singh Utreja agreed that said Maninder Sharma

would have 50% share in the land adjoining the cold store. The complainant

was inducted as a partner in February, 2018 and he invested a sum of Rs.66 lakhs and a new partnership deed dated 15.2.2018 was executed between Mohinder Singh Utreja, Maninder Sharma and Rajiv Raheja. The partnership funds were mis-appropriated by Mohinder Singh Utreja and were siphoned off into another firm owned by the petitioner. The land adjoining the cold store was also purchased in the name of the petitioner alone. The partnership firm defaulted in paying its loan and the account was declared non-performing asset (NPA). The property of the firm was taken over by the bank and put to auction sale. Thus, Mohinder Singh Utreja in connivance with the co-accused cheated his partners and mis-appropriated the funds invested by them.

3. The relevant part of order dated 6.3.2018 (P-13) reads as follows:-

“After hearing the rival contentions, I find that Mohinder Singh Utreja has got registered the sale deed in favour of his daughter Geeta Utreja to the prejudice of the other partners in the cold store and this position had come out during the enquiry/investigation conducted by the police, that Geeta Utreja is beneficiary under the sale deed, as such she cannot come up with the plea that she is innocent and has not committed any offence. The allegations against her are quite grave and serious. The FIR got lodged by Mohinder Singh Utreja is said to have been cancelled, as informed by the State counsel. Further more, huge dues are said to be outstanding and accounts were forged and despite agreement with the partners, Mohinder Singh Utreja is stated to have executed the sale deed in favour of his own daughter Geeta Utreja. Her custodial interrogation is definitely required to find out the complete factual position as to how and under what circumstances, the sale deed has

been executed in her favour and the other partners in the concern were cheated. If the custodial interrogation is denied to the Investigating Agency, that shall adversely effect the investigation, which is uncalled for, as has been observed in authority State represented by the CBI vs. Anil Sharma, 1997 (4) RCR (Criminal) 268, custodial interrogation is qualitatively more elicitation oriented since a person who is couched in comparative safety of pre-arrest bail, would certainly not disclose all the facts within his knowledge, which would be inculpatory for him.”

4. It is thus, obvious that the earlier petition for grant of anticipatory bail was dismissed after examining the merits of the case.

5. A perusal of order dated 16.11.2018 shows that notice of motion was issued in this case only because counsel for the petitioner had submitted that the petitioner was willing to settle the dispute with the complainant. Parties were referred to the Mediation and Conciliation Centre of this Court and report dated 17/20.12.2018 of the Mediator has been placed on record informing the Court that mediation between the parties had failed.

6. Thus, the second petition for grant of anticipatory bail would be maintainable only in case of changed circumstances.

7. Learned counsel for the petitioner places reliance upon a Division Bench judgment of the Gauhati High Court in **‘Runu Roy Vs. State of Assam, 2005 (17) RCR (Criminal) 602’** to argue that a second petition for grant of anticipatory bail is maintainable even in case there are no changed circumstances, however, subject to the same being heard by the same Judge. I am however, unable to accept this point of view as I have

consistently held that a second petition for grant of anticipatory bail is not

maintainable unless there are changed circumstances. Reliance can be placed upon the judgment of Hon'ble Supreme Court in '**Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav, 2005(1) RCR (Crl.) 703 (SC)**', wherein their Lordships observed that subsequent application under Section 438 of the Code of Criminal Procedure, 1973, can be maintained, if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete and that this is the limited area in which an accused, which has been denied bail earlier can move a subsequent application. In the light of the judgment in **Kalyan Chandra (supra)**, reliance upon the judgment in **Runu Roy (supra)** is misplaced.

8. It is next argued by counsel for the petitioner that a dispute between the partners is only a civil dispute and no criminal liability is involved. Reliance is placed upon '**Velji Raghavji Patel Vs. State of Maharashtra, 1965 AIR (SC) 1433.**' This contention also deserves to be rejected as it is a contention on the merits of the case, which I cannot examine in view of the observations made hereinabove.

9. It is further contended that the observations in order dated 6.3.2019 (P-13) are factually erroneous and based upon incorrect facts having been brought to the notice of the Court. It has been observed therein that (a) an earlier FIR lodged at the behest the father of the petitioner had been cancelled and (b) the father of the petitioner had executed a sale deed in favour of the petitioner. Both these observations are stated to be factually incorrect in-as-much as the order of cancellation of the FIR was recalled by the trial Court because the same was based upon misreading of the statement of the father of the petitioner. No other sale deed has been executed by the

second petition for grant of anticipatory bail would be maintainable where the earlier petition has been decided on the basis of incorrect facts.

10 This argument also deserves to be rejected for the reason that even if I accept the submission of counsel for the petitioner that the earlier order was passed upon incorrect facts, it would not help the case of the petitioner as the incorrect facts pertain to her father. So far as, the liability of the petitioner is concerned, no incorrect facts have been brought to my notice and thus, it cannot be said that the earlier order was erroneous. In any case, the earlier order was passed in presence of counsel for the petitioner and if any incorrect facts had been mentioned, the same should have been brought to the notice of the Court there and then.

11. Learned State counsel as well as counsel for the complainant have brought to my notice order dated 24.8.2018 passed in CRM-M-26141-2018, whereby anticipatory bail of co-accused has already been rejected by this Court. This order may not strictly help the complainant as allegations against the petitioners in the said petition are different from the allegations against the petitioner in the present petition.

12. However, keeping in view the observations made hereinabove the petition has no merit and is accordingly, dismissed.

(SUDHIR MITTAL)
JUDGE

21.2.2019
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No