

S.No.103

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

CRM-M-29966 of 2019 (O&M)

Date of Decision:22.07.2019

Smt. Rubinder Kaur

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Jagjit Gill, Advocate
for the petitioner.

Mr. M.D. Sharma, AAG, Haryana.

Mr. R.S. Atwal, Advocate for
the complainant.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.125 dated 03.06.2019 under Sections 420, 465, 467, 468, 471, 120-B IPC at Police Station Sadar Sirsa, District Sirsa.

The FIR in the case came into being on the statement of Rahgubir Singh, father of Harbir Singh with whom the present petitioner claims to have performed marriage and having a son from the said wedlock. It has been alleged in the FIR that there is a land measuring 8 kanals 4 marlas situated within the Lal Dora of Village Sikanderpur, Tehsil and District Sirsa. This land is ancestral property of the complainant and after the death of grandfather of the complainant, Baba Singh, the land had come to the father of the complainant along with his uncles. After the death of father of the complainant, the property had come to the complainant. The above said property has been a joint family property. However, the son of the complainant, namely, Harbir Singh, who is having relation with

the present petitioner created a fraudulent document to transfer this land in the name of the present petitioner. For that purpose, the co-accused Harbir Singh fabricated a certificate from the Sarpanch of the Village showing the said property to be in his exclusive possession and ownership. On the basis of said certificate, the transfer deed was executed by Harbir Singh in favour of the present petitioner. Therefore, the said Harbir Singh and the present petitioner have colluded in usurping the property belonging to the complainant and the joint family, by creating false and fake documents. Since the present petitioner is only beneficiary in the entire process, therefore, the entire fraud has been committed by and in active connivance of the present petitioner.

Arguing the case of petitioner, learned counsel for the petitioner has submitted that the present petitioner is second wife of the above said Harbir Singh. This marriage was performed wayback in 1996. She is having even a son from said Harbir Singh, who is now aged about 15 years. It is further submitted that even if she is treated to be the illegally wedded wife; still being the wife of Harbir Singh and mother of his son, if the property is transferred in her name, she cannot be held responsible for the same. Fraud, if any, is committed by her husband Harbir Singh only. Still further, it is submitted that there had been a civil suit between the complainant and his son Harbir Singh qua this very property. In the said suit, the possession of husband of the petitioner qua property was upheld, although, it was held that Harbir Singh had no title to the said property. After the suit was decided, the present FIR has been got lodged by the father of the husband of the petitioner. The entire exercise is to settle the

matter with the son. However, in the entire process, the present petitioner stands nowhere.

On the other hand, learned counsel for the complainant, who is present in the Court, submits that son of the complainant, namely, Harbir Singh was already married, he was having one son and two daughters. He had not cared for his wife, son and daughters. The said Harbir Singh did not even attend the marriages of his children, instead, he started having relations with the present petitioner. Thereafter, the said co-accused Harbir Singh allegedly performed marriage with the present petitioner, though illegally. After marriage, the co-accused Harbir Singh has transferred the properties disproportionately in the name of the present petitioner and her son, by depriving the son and daughters from the first wife. In the present case also, in his attempt to swindle the property belonging to the joint family; in which the son, daughters from the first wife were also having share, the co-accused Harbir created this design of fabricating a certificate showing his ownership and then transferring the same in the name of the present petitioner. Therefore, the present petitioner has actively participated in the process of the fraud. She cannot, by any means, claim innocence because she is participant in the process and is the ultimate beneficiary of the fraudulent transaction. It is further submitted that the Civil Court has already held that the co-accused Harbir Singh had no exclusive title or possession over the property.

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, this power is not available even 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.

In the facts and circumstances of the case, this Court finds substance in the argument of the learned counsel for the complainant and is of the considered opinion that the arguments raised by learned counsel for the petitioner are devoid of any merit. Of course, the petitioner is not the legally wedded wife of the son of the complainant. Therefore, by any means, the present petitioner had no right qua the property involved in dispute. Even the son of the complainant; whom the petitioner claims to be her husband, had no exclusive rights either qua title or qua the possession over the property. While deciding the suit, even the Civil Court has also held that the co-accused of the petitioner Harbir Singh had no title to transfer the same to the present petitioner. Even qua the possession, the Court has

denied the decree to the complainant only for the reason that the property was still joint and, therefore, being a co-sharer, even the co-accused Harbir Singh would have a joint right qua the possession of the said property. These facts would show that the co-accused Harbir Singh had no tittle to validly transfer the same to the present petitioner. This fact could have actuated the desire of the co-accused Harbir Singh to create a fraud, as alleged in the present complaint. He has gone to the extent of creating a false document; on the basis of which he represented before the authorities that he was the lawful title holder of the property. Even this document, which is stated to have been prepared by the Sarpanch of the Village; has not been wholly owned by the said Sarpanch. Therefore, by any means, the fraud involved in the case, as alleged, cannot be ruled out. Therefore, there are no mitigating circumstances showing, ex-facie, the innocence of the accused/ petitioner qua the allegation levelled against her. Since the petitioner is the only beneficiary in the entire process and she has not even denied having participated in the process of transfer of the title, she also cannot claim any ex-facie innocence in the matter.

Hence, this Court does not find any ground to exercise its power under Section 438 Cr.P.C and to grant anticipatory bail to the petitioner. This Court also finds that since the alleged fraud has been committed by surreptitious participation of the petitioner and her alleged husband, therefore, it is only the husband and the alleged wife, who can explain the things. For that purpose, the Police may require the custodial interrogation of the wife/petitioner as well. Hence, this Court is also of the opinion that if the petitioner is granted any protection, it shall also hamper

the free and fair investigation by the Police.

In view of the above, finding no merit in the petition, the same is dismissed.

July 22, 2019	(RAJBIR SEHRAWAT)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No