

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 13426 of 2020 (O&M)

Date of decision : 5.8.2020

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Kaka

.....Petitioner

vs.

State of U.T., Chandigarh

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Varinder Arora, Advocate
for the petitioner.

Mr. Rajeev Sharma, Addl. P.P., U.T., Chandigarh

Mr. Gautam Diwan, Advocate for the complainant.

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

This petition for grant of pre-arrest bail has been filed by petitioner Kaka aged 77 years, son of Shadi, resident of village Cholta Khurd, Tehsil Kharar, SAS Nagar, Mohali, an accused in FIR No. 17 dated 10.2.2020 for offences under Sections 418, 420, 477, 506 IPC, registered at Police Station Sarangpur, Chandigarh.

Briefly stated, facts of the case are that complainant Jagdish Singh, son of Ram Saran, resident of House No. 122, Milk Colony, Dhanas, UT, Chandigarh, had filed a criminal complaint in the Court

of Judicial Magistrate Ist Class, Chandigarh, with a prayer for issuance of a direction to the local police to register a formal FIR in terms of Section 156 (3) Cr.P.C.

Inter alia in the complaint, the complainant had contended that Kaka Singh – petitioner – accused was original allottee of plot No. 122, Milk Colony, Dhanas, UT Chandigarh, vide allotment letter memo No. 285 dated 8.5.1987. Possession letter was issued in his favour on 6.10.1989. The complainant contacted Kaka through Jagjit Singh and entered into an agreement to sell dated 21.5.1995 for purchase of plot No. 122 for a total sale consideration of Rs.1,63,000/- paying Rs.30,000/- as earnest money on different dates. The last date for execution of sale deed/attorney was fixed as 25.9.1993. The remaining payment was made on 13.9.1993, which was duly acknowledged vide separate affidavit of even date. Kaka had executed registered irrevocable General Power of Attorney, Special Power of Attorney and Will in the favour of the complainant and his brother Dayal Singh. He had furnished an affidavit in that regard also, acknowledging receipt of full and final payment, handing over the vacant physical possession of the plot and related documents to the complainant. According to the complainant, he has been paying the balance installments and got the building plan sanctioned in his favour. He had been paying all the necessary charges. With passage of time, the value of the plot has increased manifold and presently it is around Rs.1.21 Crores. Sometime ago, the complainant received an information from the Estate office, Chandigarh, that General Power

of Attorney in his favour has been cancelled by Kaka .

According to the complainant, this was so done by Kaka without giving any notice to him as such he had committed offences unde Sections 418, 420, 477, 506 IPC. The matter was reported to the police but no action was taken. Therefore, the complaint was filed in the Court of Judicial Magistrate Ist Class, Chandigarh, who issued a direction to the local police to register a formal FIR and it was accordingly done.

Apprehending his arrest in the case, the petitioner had approached the Court of Sessions at Chandigarh, seeking pre-arrest bail. However, his such request was declined by Additional Sessions Judge, Chandigarh, to whom the bail application was assigned vide order dated 9.3.2020, as such he has approached this Court by way of filing the present petition, craving for grant of similar relief, which request is being opposed by the Additional PP for UT, Chandigarh and learned counsel for the complainant.

I have heard learned counsel for the petitioner, learned Additional PP for UT Chandigarh, as well as, learned counsel for the complainant, besides going through the record.

The dispute between the parties comes out to be of civil nature and even as per case of the petitioner civil litigation between the parties is pending in the Court. Copy of the plaint in the civil suit filed by the petitioner accused – Kaka against defendant – complainant Jagdish Singh and his brother Dayal Singh has been placed on file by the petitioner as Annexure P-2. Copy of notice

statedly sent by the petitioner to Jagdish Singh and Dayal Singh with regard to cancellation of General Power of Attorney and Special Power of Attorney dated 13.9.1993 alongwith copy of the postal receipt have also been attached with the petition.

The petitioner - accused had joined the investigation as per direction issued by learned Additional Sessions Judge, Chandigarh. Copy of status report submitted in the Court of Additional Sessions Judge, UT, Chandigarh by SI Iqbal Singh, Police Station Sarangpur, U.T., Chandigarh, goes to show that petitioner -accused had joined the investigation on 7.3.2020 as per orders issued by that Court.

Basically, this case is mainly based upon documentary evidence. On being enquired, learned Additional PP, UT, Chandigarh, stated that as per his instructions, custodial interrogation of the petitioner is not required by the local police.

Keeping in view the nature of allegations, only during the trial it can be determined as to whether the petitioner has committed any criminal offence or not therefore, I find it a fit case to grant the benefit of pre-arrest bail to the petitioner.

Accordingly, the petition is accepted and it is directed that in case of his arrest in this case, the petitioner be released on bail by the Arresting Officer/Investigating Officer, subject to fulfillment of following conditions:-

- i) that the petitioner shall join the investigation as and when asked to do so by the Investigating Officer.
- ii) that the petitioner shall not give any threat or intimidation

to the prosecution witnesses.

iii)that the petitioner shall not leave India without the prior permission of the Court.

iv)that the petitioner shall surrender his passport before the Investigating Officer and if he is not having passport then he shall file an affidavit in that regard.

In case the petitioner violates any term and condition on which the bail has been granted to him, the prosecution would be entitled to apply for cancellation of bail.

However, nothing discussed above shall have any bearing on the merits of the case.

5.8.2020
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No