

103

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

CRM-M-22202 of 2020
Date of decision : 11.08.2020

Nitesh Sood

.....Petitioner

Vs.

State of Punjab

.....Respondent

CRM-M-22245 of 2020

Asha Sood

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: Hon'ble Mr. Justice G.S. Sandhawalia

Present:- Mr. Vivek K. Thakur, Advocate for the petitioner(s)
(in both the petitions)

Mr. Hitten Nehra, Addl. AG, Punjab.

Mr. Vaibhav Sehgal, Advocate for the complainant.

(The proceedings have been conducted through Video
conferencing as per instructions.)

G.S. Sandhawalia, J. (Oral)

This order shall dispose of second bail application filed under Section 438 Cr.P.C., by Nitesh Sood and his mother Asha Sood for grant of anticipatory bail in FIR No.103 dated 1.7.2020 under Sections 465, 467, 468, 471 read with Section 34 IPC and Sections 420, 448, 506, 120-B of IPC and Section 82 of Registration Act, 1908 registered at Police Station Division No.4, Ludhiana.

The first bail applications were dismissed after arguing for some time as not pressed on 31.7.2020. The order passed by this Court reads as under:-

“After arguing for some substantial time and on account of

assistance given by counsel for the complainant, counsel for the petitioners submits that he does not wish to press the present petitions for grant of anticipatory bail.

Dismissed as not pressed.”

Counsel for the petitioners submits that certain material facts could not be brought to the notice of this Court, therefore, second petitions have been filed for grant of anticipatory bail.

Counsel submits that it is a case of documentary evidence and the petitioners are liable to be granted anticipatory bail. It is submitted that effort is being made by the complainant Raj Kumar to grab the property as such and the petitioners are residing in the said property. There is a dispute regarding demarcation. In such circumstances the benefit of anticipatory bail is liable to be granted.

Mr. Sehgal, counsel for the complainant has assisted this Court for the second time and had also put in appearance at the first instance also when the earlier petitions were dismissed as withdrawn.

A perusal of the FIR which was lodged by Mr. Raj Kumar son of Roshan Lal would go on to show that dispute is regarding the property bearing No.B-5-47 measuring 40 Sq. yard which was transferred by brother of Surinder Kumar namely Vijay Kumar son of Dharam Pal in the name of complainant on 13.6.2019 (Annexure P-3). It is the case of the complainant that on 23.6.2019 after closing the shop, Surinder Kumar who is father of Nitesh Sood and husband of Asha Sood had forcibly put their articles on the first floor of the shop. Surinder Kumar along with Nitesh Sood in collusion with Clerk and Superintendent etc. of the Municipal Corporation without having any ownership documents got a direct entry put by creating a fake number B-5-47/1 measuring 20 Sq. yard and got issued TS-1(Tax

Summary Certificate). Therefore, a dispute has arisen on the ground that fake partition of 20 Sq. yard was done out of the property in question.

Counsel for the petitioners has thus vehemently submitted that 20 Sq. yards was a separate portion which was never subject matter of sale deed dated 13.6.2019 (Annexure P/3). TS-1 which was issued on 24.7.2019 was issued at the behest of the father of the petitioner Nitesh Sood namely Surinder Sood who is already in detention and therefore, the petitioners are not required for custodial interrogation. Counsel further submits that the entry regarding the property bearing No. B-5-47/1 measuring 20 sq. yard was made vide TS-1, which has been revoked by the Municipal Corporation and therefore, the petitioners are entitled for the benefit of anticipatory bail.

It is further argued that the enquiry proceedings (Annexure P/10) were also based on the fact that Surinder Sood and Smt. Rajia, Clerk as such were found responsible for making wrong entries vide TS-1 and therefore, benefit of anticipatory bail is sought.

It is not disputed that the father of the complainant namely Roshan Lal was a tenant with Vijay Sood brother of Surinder Sood who had sold the property vide sale deed dated 13.6.2019 (Annexure P/3) wherein description had been given as three floor building of 40 Sq. yard. The sale was in pursuance of the compromise arrived at after the litigation had been initiated to evict the tenant which was subject matter of Civil Revision Nos. 3311 of 2013 and 6068 of 2015 before this Court, which were disposed of in terms of compromise dated 1.6.2019 (Annexure P/2). As noticed the sale deed was executed thereafter on 13.6.2019. On 24.7.2019 TS-1 (Tax Summary Certificate) was issued for the area measuring 20 sq. yard without any formal order of partition, which now stands revoked. Two days later on

26.7.2019, the sale deed was executed by the husband of Asha Sood namely Surinder Sood whereby he had transferred the said area in favour of his wife Asha Sood who is the petitioner here and thus is a beneficiary. Her son namely Nitesh Sood was a witness to the said transfer whereby immovable property had been transferred without any formal order of partition by showing its number B-5-47/1. The enquiry proceeding (Annexures P/10) conducted by the Joint Commissioner (M) of the Municipal Corporation, Ludhiana has also been referred to would go on to show that the tax returns of the newly created property no.B-05-47/1 from 2013-14 to 2019-20 had been filed on one date i.e. 11.7.2019. The application for issuance of TS-1 was also submitted on 17.7.2019 and the same was issued on 24.7.2019. These factors prima facie would go only show that a larger conspiracy had been hatched and wrong entries had been made in the record of the Municipal Corporation to take the benefit in the litigation.

The argument of Counsel for the petitioners that Surinder Sood is responsible for the said misdeeds and he is already in custody would not take the petitioners long way. Once Asha Sood is the beneficiary of the transfer of the property and Nitesh Sood is the witness to the said transfer deed dated 26.7.2019 and all these documents have been executed in a short span of time of one month. Therefore, matter is required to be investigated thoroughly and custodial interrogation would be needed to elicit the truth.

It is settled principle that anticipatory bail is not to be granted in normal circumstances and it is an extraordinary jurisdiction which is to be exercised where case of false implication or political malafide is apparent on the face of it.

In view of above, this Court is of the opinion that second

anticipatory bail petitions are not maintainable and otherwise also on merits as discussed above, this Court is not inclined to grant anticipatory bail. Merely because some other co-accused have been granted the benefit of anticipatory bail who are not on same pedestal and not beneficiaries would not entitle the petitioners for the said benefit.

Accordingly, both the petitions stand dismissed.

11.08.2020
Pka

(G.S. Sandhawalia)
Judge