

S.No.103

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

CRM-M-26156 of 2020 (O&M)

Date of Decision:07.09.2020

Jagdeep Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

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IN VIRTUAL COURT
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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Pranav Handa, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present second petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.132 dated 12.06.2020 registered under Sections 457, 380, 447, 511, 120-B IPC at Police Station Dasuya, District Hoshiarpur.

It deserves to be mentioned at the outset that the petitioner had, earlier also, filed similar petition seeking anticipatory bail. When the Court was not inclined to interfere, counsel for the petitioner had withdrawn the said petition and the same was also dismissed as withdrawn vide order dated 27.07.2020. Now by changing the counsel, the petitioner has filed the instant second petition.

The allegations against the petitioner, as contained in the FIR, are that the complainant was having three maternal uncles. Out of them, Kuldeep Singh is NRI. Narinder Singh was younger to him. However, he had expired. The third maternal uncle of the complainant had already expired several years back. It was further alleged that the complainant was

taking care of the property of his maternal uncle Kuldeep Singh who is NRI. One of the properties of Kuldeep Singh, namely, a house is situated at Village Jhingar Kalan. In the said house, earlier some relatives of the accused/ petitioner were residing. As per the direction of his maternal uncle, the complainant had got that house vacated from them and had put the lock on the gate. However, on 01.06.2020, at about 10:00 a.m., the complainant received a call of one Jarnail Singh; resident of Village Jhingar Kalan, that somebody had uprooted the gate of the house of his maternal uncle Kuldeep Singh and had taken away the gate with him. Thereafter, the complainant reached at the Village Jhingar Kalan; where he came to know that the gate of the house of his maternal uncle was taken away during the night by the present petitioner Jagdeep Singh; with the support of and in connivance of his elder brother Lakhvir Singh, who is serving in Police Department and deputed at Jalandhar, as well as his mother, Mohinder Kaur. Thereafter, the accused had installed another gate and had put their lock on the said house. They were trying to usurp the house of his maternal uncle Kuldeep Singh. With these allegations, FIR was got registered against the present petitioner, his elder brother and his mother.

Arguing the case, learned counsel for the petitioner has submitted that the house in question was ancestral property; in which Kuldeep Singh also had a share. Besides this, there were other properties situated at Village Jhingar Kalan. However, the family of the petitioner was residing at another house situated at Hoshiarpur. That house was got vacated by Kuldeep Singh under a compromise; and in lieu of vacating that house, the above-said Kuldeep Singh had relinquished his share in the

house in question, in another house in Village Jhingar Kalan in which Atta Chakki was installed, as well as, in another plot of 100 sq. yards which was adjacent to Atta Chakki; besides paying Rs.5 lakhs to the petitioner and his family. Therefore, the petitioner and his family had become exclusive owner of the said house and above-mentioned other properties. Even the possession of that house was handed over to the family of the petitioner by the earlier occupants. It is also submitted by counsel for the petitioner that at the time of hearing of the earlier petition, counsel for the complainant had wrongly mentioned that there were two houses at Village Jhingar Kalan whereas there is only one house at that village. Counsel has also submitted that the petitioner has also filed a civil suit qua the house in question. Hence, the dispute qua that property shall be decided by the civil Court. Therefore, the petitioner deserves to be protected against his arrest.

Notice of motion.

Ms. Samina Dhir, DAG, Punjab, accepts notice on behalf of the State.

It is submitted by learned State Counsel, being instructed by SI Paramjit Singh, that the petitioner is factually incorrect in submitting that the property involved in the FIR is the same property which is the subject matter of the alleged compromise; pleaded by counsel for the petitioner. The property in question was, in fact, owned by mother of the present complainant. The same was given by her, exclusively, to her brother Kuldeep Singh through a Will. Therefore, the petitioner and his family had no concern with the said property. They had tried to usurp the property belonging to Kuldeep Singh. Hence, they have committed the crime. It is

further submitted that even the copy of the Will; through which the property was bequeathed in the name of Kuldeep Singh; is very much available with the complainant. Hence, the entire claim of the petitioner qua this property is nothing but an attempt to illegally usurp the property of a person; who is not residing in India. Hence, the petitioner has committed heinous crime. He does not deserve any concession of anticipatory bail.

No doubt, 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.

Coming to the facts of the present case, there are specific allegations against the petitioner. The petitioner along with his accomplice

is alleged to have uprooted and taken away the gate of the house. Not only that, the petitioner has prevented the complainant from enjoying the property statedly owned by Kuldeep Singh. Still further, it has come on record that the petitioner has gone to the extent of making attempt to create false evidence; by pleading the civil suit filed by him; to get anticipatory bail. A bare perusal of the plaint, which has been placed on record by the present petitioner himself, shows that; in fact; the suit was filed by the present petitioner after his earlier petition for anticipatory bail was got by him dismissed as withdrawn.

Otherwise also, the petitioner is claiming an alleged compromise in his favour to lay claim upon the property involved in the FIR. However, despite the repeated queries being put by the Court, counsel for the petitioner failed to point out as to which properties were given to Kuldeep Singh out of joint family properties; under that compromise or otherwise. The alleged compromise appears to be suspicious being a purely unilateral one in favour of the petitioner and his family only. The said compromise is alleged to be effected in the presence of the Police. The said compromise makes a very interesting reading, i.e., that the complainant has relinquished all his shares in all the joint properties and has also given Rs.5 lakhs to the petitioner and his family. All this has been; statedly, done to get the house situated at Hoshiarpur vacated. There is nothing on record to suggest that the said house was a joint property of the petitioner and Kuldeep Singh. Despite being given opportunity to show any document to establish jointness of the said house at Hoshiarpur, the petitioner failed to produce any such document. Not only this, even in the suit filed by the

petitioner, there is no such assertion that the said house was a joint property and in lieu of vacating that house, all the properties were relinquished by the complainant/Kuldeep Singh in favour of the petitioner. Hence, prima-facie, this appears to be a case of depriving the complainant of all his properties. Therefore, the allegation of the complainant that everything is being done under pressure of elder brother of the petitioner, who is serving in Police, cannot be ruled out. Hence, this Court does not find any extenuating circumstances showing the ex-facie innocence on the part of the petitioner, vis-a-vis, the allegations levelled against him. Therefore, this Court is not inclined to exercise its powers under Section 438 Cr.P.C; so as to protect the petitioner against his arrest. Still further, the transactions involved in the matter; and as claimed by the petitioner also, involve complicated facts, which may be required to be unearthed by the Police by making recoveries and discoveries. Therefore, protecting the petitioner, at this stage, against his arrest, would hamper free and fair investigation by the Police as well.

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

September 07, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No