

CRM-M-36677-2020 (O&M)

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

**CRM-M-36677-2020 (O&M).
Decided on: December 17, 2020.**

Smt.Kailash Chopra

.. Petitioner

VERSUS

State of Haryana and another

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Yogeshwar Dayal, Advocate,
for the petitioner.**

Mr.Munish Sharma, AAG, Haryana.

**Mr.Johan Kumar, Advocate,
for complainant – respondent No.2.**

JASGURPREET SINGH PURI, J. (ORAL)

The present case has been heard through video
conference.

CRM-M-36677-2020 (O&M)

CRM-30890-2020

The present application under Section 482 Cr.P.C. has been filed for impleading Prem Madan, complainant in the present petition as respondent No.2.

For the reasons mentioned in the application, the same is allowed. Prem Madaan is impleaded as respondent No.2.

Amended Memo of Parties is taken on record. Be substituted at appropriate place.

CRM-30891-2020

The present application under Section 482 Cr.P.C. has been filed for placing on record Annexures R1 to R4 on behalf respondent No.2- complainant.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Annexures R1 to R4 are permitted to be taken on record. Be tagged at appropriate place.

Main Case

This is a petition filed under Section 438 Cr.P.C. for the grant of anticipatory bail to the petitioner in case FIR No.885 dated 20.12.2019, under Sections 420, 448 and 120-B IPC, registered at Police Station Sector 7, District Faridabad (Haryana).

The facts in the present case are that the

respondent No.2 – complainant namely Prem Madan made a complaint to the police that he lives in house No.531, Sector 7-B, Faridabad and the house No.3809 FF, Sector 3, as mentioned in subject cited above is in his name since 31.7.2002 and he had been continuously receiving the electricity bills of the aforesaid house till the year 2014 but later on he did not receive any electricity bill for the same and therefore, he approached the office of SDO of Sector 3 DHBVN and moved an application in this regard for electricity meter account. However, the meter was found installed in the name of petitioner allegedly in connivance with staff members of the DHBVN and so an inquiry be made in this regard.

Learned counsel for the petitioner has submitted that in the present case the petitioner has been falsely implicated. He has submitted that respondent No.2 is the son-in-law of the petitioner and even as per the FIR, he was continuously receiving the bills of the aforesaid house till the year 2014 and later on did not receive any electricity bills for the same and the allegations in the FIR are that the petitioner got the electricity connection changed in her name fraudulently. Learned counsel for the petitioner has further submitted that the petitioner is a lady of more than 74 years of age and had been living in the present house since

the year 2000 and later on a dispute arose between the petitioner and her son-in-law. Respondent No.2 had filed the eviction petition against the petitioner under the Rent Act and same was decreed on 28.11.2014 vide Annexure R1 and appeal against the same was also dismissed vide Annexure R2 and later on the possession of the house was delivered to respondent No.2 – complainant. He further submitted that as per the allegations contained in the FIR, till the year 2014, i.e. the year in which the eviction petition was decided, respondent No.2 - complainant was getting electricity bills in his name and at that point of time, the dispute had started. The petitioner was in possession of the house since the year 2000 and also in the year 2014. Vide Annexure P4, on 17.12.2018, respondent No.2 had submitted a statement before the executing Court that possession has been taken and therefore, the execution application was withdrawn being fully satisfied. Learned counsel for the petitioner has submitted that now after a period of more than 5 years, respondent No.2 – complainant has lodged the present FIR by alleging that in the year 2014, the name was changed whereas, in fact, the petitioner was living in the house in the year 2014. Learned counsel for the petitioner has further pointed out that the petitioner had filed injunction suit against the

respondent No.2 in which respondent No.2 was restrained from dispossessing the petitioner except in due course of law. He has further submitted that the matter had a background of civil nature and bald allegations have been made against the petitioner that she was instrumental in getting the name changed in the year 2014. He has further submitted that there is an unexplained delay of more than 5 years in lodging the FIR and the petitioner being a lady of more than 74 years of age may be granted the concession of anticipatory bail in the present case particularly in view of the fact that custodial interrogation of the petitioner is not required as the matter in dispute pertains to the record available with the Electricity Department.

On the other hand, learned State counsel has submitted that the matter pertains to the allegations of change of name in the electricity connection and therefore, the matter is being investigated thoroughly and the application be dismissed.

On being specifically asked as to why custodial interrogation of the petitioner is required, the learned State counsel could not reply the same satisfactorily and also could not satisfy that in case the petitioner is granted anticipatory bail, then there is any possibility of her fleeing away from justice or tampering with

any evidence.

Learned counsel for respondent No.2 – complainant has submitted that the house belongs to respondent No.2 and he took the possession of the house in execution proceedings in the year 2018 vide Annexure R4 and the petitioner has fraudulently got the meter connection changed in her name and therefore, opposed the grant of anticipatory bail to the petitioner.

I have heard the learned counsel for the parties.

The law with regard to anticipatory bail is well settled. The Hon'ble Supreme Court in **Arnesh Kumar Vs.State of Bihar and another, (2014) 8 Supreme Court Cases 273** held that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to

prevent such person from making any inducement, threat or promise; or to a witness so as to dissuade him from disclosing such facts to the court; or the police officer or unless such accused person is arrested, his presence in the Court whenever required cannot be ensured.

Furthermore, the Hon'ble Supreme Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others, 2011 (1) SCC 694*, laid down the factors and parameters which are to be taken into consideration while hearing the anticipatory bail petitions. The relevant portion of the aforesaid judgment is reproduced as under:-

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any

cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and

concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the court of Sessions or the High Court is always available.

Irrational and Indiscriminate arrest are gross violation of human rights.

115. In Joginder Kumar's case (supra), a three Judge Bench of this Court has referred to the 3rd report of the National Police Commission, in which it is mentioned that the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.”

In the present case, the dispute is with regard to the change of name in the electricity meter connection account. The petitioner is an old lady of 74 years of age. There is nothing on the record to show nor the learned counsel for the respondents has been able to satisfy this Court as to whether in case the petitioner is

granted the concession of anticipatory bail she may influence any witness or tamper with the record. As held by the Hon'ble Supreme Court in *Siddharam Satlingappa Mhetre (supra)* the arrest should always be the last option and it should be restricted only to those circumstances where it is imperative in the facts and circumstances of a particular case. Furthermore, a balance has to be struck between two factors, first, no prejudice should be caused to the free, fair and full investigation and second there should be prevention of harassment, humiliation and unjustified detention of the accused

The allegations contained in the present case and the submissions made by the learned counsel for the respondents would show that it is not a fit case where the petitioner should be denied the grant of anticipatory bail particularly in view of the fact that there is an unexplained delay of more than 5 years in lodging of the FIR and there is nothing to show as to why custodial interrogation of the petitioner who is a lady and aged 74 years, is required. Consequently, the present petition is allowed. It is ordered that the petitioner will continue to join the investigation as and when required. Interim order dated 9.11.2020, is hereby made absolute.

However, it is made clear that aforesaid observations of this Court are only for the purpose of deciding the present petition and will not in any manner whatsoever reflect on the merits of the case.

December 17, 2020. (JASGURPREET SINGH PURI)
raj arora JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No