

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

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**CRM-M-36903-2020
Date of decision: 10.11.2020**

Dharampal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Jai Singh Yadav, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present (first) petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C") for grant of anticipatory bail in case FIR No.0045 dated 08.02.2019 registered under Sections 120-B, 420, 467 and 471 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station Kanina, District Mahendergarh.

The above said FIR was registered on complaint of Chanderkala Devi, a scheduled caste woman, who alleged that she purchased land measuring 8 kanals from co-sharer Sri Pal vide sale deed dated 25.06.1998 and mutation was sanctioned in her favour. She was and continues to be in possession of killa No.33//6 (8-0). Magan Singh in conspiracy with his son Ompal Singh and Dharampal (the petitioner) filed application for partition and got partition order passed by producing some other woman to falsely personate as the complainant and filing her statement before the Court by affixing

thumb impression of the woman who falsely personated as the complainant. She made complaint on CM window but ASI Balwant Singh in connivance with the accused without any investigation and comparison of her thumb impression reported that the partition had been correctly made. The complainant accordingly requested that action be taken against the above said persons for grabbing her land by fraud by way of false personation.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. The allegations made in the FIR were levelled against Magan Singh and his son Ompal Singh. The petitioner, who was impleaded as respondent in the partition proceedings, had no role in commission of the subject offences. The petitioner being aggrieved by the partition order dated 23.12.2006 filed appeal against the same before the Collector, Narnaul which was dismissed vide order dated 17.10.2007. The petitioner filed revision petition before the Commissioner against the same which is pending. The complainant did not challenge the partition order despite the fact that she had been appearing in the appeal filed by the petitioner. On the basis of sanad taksim possession proceedings were executed on 10.01.2007 and Thawar Singh brother of the complainant took possession on her behalf. Subsequently, the matter has also been settled vide family settlement dated 10.02.2020. The case is based on documentary evidence. Co-accused have been granted regular bail. The petitioner is ready to join the investigation and the petitioner may be granted anticipatory bail.

Notice of motion.

Pursuant to supply of advance copy, Mr. Ranvir Singh Arya, Addl. A.G., Haryana has appeared and accepted notice on behalf of the respondent-State.

Learned State Counsel has submitted that the petitioner had conspired with his co-accused Magan Singh and Ompal Singh in committing the fraud by way of false personation by some other woman as the complainant. Custodial interrogation of the petitioner is necessary for ascertaining the particulars of the woman who had falsely personated as the complainant. The petitioner does not deserve the grant of anticipatory bail. Therefore, the petition may be dismissed.

In ***P. Chidambaram Vs. Directorate of Enforcement (SC)***
: ***2019(4) R.C.R.(Criminal) 875*** Hon'ble Supreme Court observed as under :-

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C., 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

In ***State Rep. by The CBI Vs. Anil Sharma : (1997) 7 SCC 187***, the Supreme Court held as under:-

"4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced

with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

In *Jai Prakash Singh Vs. State of Bihar and another* :

(2012) 4 SCC 379, Hon'ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See also ***D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434***, ***State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213*** and ***Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305***).

In view of the above referred legal perspective and the facts and circumstances of the case, nature of accusation, role attributed to the petitioner of having conspired with his co-accused Magan Singh and Ompal Singh in committing the fraud by false personation by some other woman as the complainant and custodial interrogation of the petitioner being necessary for ascertaining the facts regarding his involvement in the crime, particulars of the woman who had falsely personated as the complainant and other relevant details about the crime, but without expressing any opinion on the merits of the case, I

am of the considered view that the petitioner does not deserve the grant of anticipatory bail.

In view of the above, the petition for grant of anticipatory bail to the petitioner is hereby dismissed.

10.11.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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