

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

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**CRM-M-36768-2021 (O&M).
Date of Decision: 22.11.2021.**

Shamsher Singh

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Parminder Singh, Advocate for petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

Lalit Batra, J.(Oral)

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Shamsher Singh** son of **Teka** in case FIR No.486 dated 29.12.2020 under Sections 419, 420, 467, 468 and 471 IPC, registered at Police Station Civil Lines, Jind, District Jind.

In compliance of order dated 07.09.2021, status report dated 28.09.2021 by way of affidavit of Dharamvir Singh, Deputy Superintendent of Police, Julana, District Jind, already filed on behalf of respondent-State, is taken on record.

Learned counsel for the petitioner *inter alia* contends that allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that allegedly petitioner being attesting witness of Sale Deed No.5604 dated 17.01.2013 had identified co-accused Krishan, impersonator of Sube Singh, whereas petitioner has no nexus whatsoever with the alleged transaction as he was not beneficiary of the sale deed, as detailed above. He further urges that as a

matter of fact, petitioner is an agriculturist and used to purchase grocery items from the shop of Surender Kumar, brother of co-accused Ashish Kumar and he (petitioner) was called to identify Ashish Kumar and the said Ashish Kumar was also identified by Namberdar of the area concerned. He further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that house ad-measuring 184 square yards/6 Marlas out of total land comprised in Min Jumla Murabba No.165, Killa No.12/2, situate in the area of Joginder Nagar, was purchased by complainant-Shamsher Singh in the name of his wife-Sumitra Devi from Rita Devi, vide registered Sale Deed No.577 dated 28.04.2016. He further submits that above said Rita Devi had purchased the said house from Maya Devi, vide registered Sale Deed No.3966 dated 04.01.2002. He further submits that above said Maya Devi had purchased aforesaid house from Krishan Kumar, Ramesh Kumar, Santosh and Smt. Lichhmi Devi, LRs of Ishwar Singh, vide registered Sale Deed No.4874 dated 06.03.2000. He further submits that Ishwar Singh (since deceased), predecessor-in-interest of above said Krishan Kumar and others, had purchased above said house from Sube Singh, vide registered Sale Deed No.1129 dated 18.07.1996, whereas above said Sube Singh had purchased the said property from one Jugti Ram, vide registered Sale Deed No.1118 dated 08.07.1992. He further submits that previously above said Jugti Ram was owner-in-possession of

above said property as per revenue record and he had got entered Mutation No.10819 in favour of vendee-Sube Singh, but the subsequent vendees had not got sanctioned mutation of above said property in their names and as such mutation stood in the name of Sube Singh. He further urges that while taking advantage of the above said fact, co-accused Ashish Kumar while playing fraud got executed registered Sale Deed No.5604 dated 17.01.2013 of above said property in his favour by producing some other person (co-accused Krishan) impersonating in place of Sube Singh, wherein petitioner had appeared as attesting witness of alleged vendor (impersonator Krishan) in the Sale Deed No.5604 dated 17.01.2013. He further urges that co-accused Ashish Kumar had taken a loan of Rs.12,72,215/- from Indian Overseas Bank, Safidon Gate, Jind, by mortgaging the above said house and thereafter made default in the repayment of loan amount and as such a sum of Rs.20,08,082/- alongwith interest has become due against him. He further urges that above said fraud on the part of petitioner and co-accused Ashish Kumar came to the notice of complainant-Shamsher Singh when he received a notice from the above said Bank. He further submits that Sube Singh is still alive and he (Sube Singh) got recorded his statement on 13.01.2021, wherein he disclosed that photograph affixed on Sale Deed No.5604 dated 17.01.2013 does not pertain to him and he was not party to the abovementioned sale transaction. He further submits that in this manner, petitioner in connivance with co-accused namely Ashish Kumar, Krishan Kumar and Ramesh Kumar Phulia (since deceased) committed fraud upon complainant-Shamsher Singh, thereby impersonating co-accused Krishan

Kumar as Sube Singh and got executed false, fake and fabricated sale deed. He further submits that petitioner was duly named in the FIR and he actively participated in the commission of offence. He further urges that in view of nature of offence committed by the petitioner, his custodial interrogation is required to unveil the truth and as such he is not entitled to the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly petitioner alongwith co-accused namely Ashish Kumar, Krishan Kumar and Ramesh Kumar Phulia (since deceased) in connivance with each other committed fraud upon complainant-Shamsher Singh son of Balwant Singh by executing a false, fake and forged sale deed. Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is well-settled that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the police. The Court has also to see that the investigation is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in

granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement to pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

22.11.2021

jitender

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No