

CRM-M-45585-2021

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

(211)

CRM-M-45585-2021.

Date of Decision:-03.11.2021.

Baldev Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amandeep Singh Manaise, Advocate for the petitioner.

Mr. A.K. Kaundal, DAG, Punjab.

Mr. Vipin Mahajan, Advocate for the complainants.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a first petition under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.101 dated 02.09.2021 under Sections 420 and 120-B of IPC, registered at Police Station Dhariwal, District Gurdaspur.

Mr. Vipin Mahajan, Advocate has appeared on behalf of the complainants and filed his power of attorney. Same is taken on record.

Learned counsel for the petitioner has submitted that the petitioner is a 76 year old man and a civil dispute has been given a criminal colour only to extract money from the petitioner. It is submitted that the complainant Amrik Chand, along with 4 other persons, had filed a civil suit No.CS1819/2014 dated 18.09.2014 for recovery of Rs.65,00,000/- against the present petitioner and other persons. In the said suit, a written statement

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was filed and the plea had been taken by the defendants therein, including the petitioner that the documents sought to be relied upon by the complainant therein were forged and fabricated and in order to prove the same, handwriting expert was appointed and the report of the handwriting expert dated 25.02.2019 (Annexure P-6) has also been annexed with the present petition. It is submitted that the civil suit is at the final stage and after a delay of more than 07 years, from the date of filing of the civil suit, the present FIR has been got registered, in which the petitioner and his son, who is neither a party in the civil suit nor is a signatory to any agreements, has also been implicated only to exert pressure on the family of the petitioner, so as to persuade them in favour of the complainant in the civil suit. It is further argued that the petitioner has not been involved in any other case and the co-accused of the petitioner i.e., Partap Singh, has been granted anticipatory bail vide order dated 12.10.2021 passed in CRM-M-42961-2021. Learned counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court in ***Inder Mohan Goswami and Another v. State of Uttaranchal and Others***, reported as 2007 (12) SCC 1. Relevant paragraphs of the said judgment are reproduced hereinbelow: -

“12. Having committed breach of his contractual obligations, respondent No. 3 filed a criminal complaint to the SHO of Raiwala, Rishikesh police station on 23.4.2003 against the appellants and three other persons alleging that he had been cheated by the appellants in connivance with other persons by selling a portion of his land to a third party and by cancelling the General Power of Attorney. After

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examining the matter, the SHO arrived at the conclusion that no cognizable offence had been committed and the dispute in question was of civil nature for which the civil remedy is available in law.

13. Respondent No. 3 filed another complaint on the same day, i.e. 23.4.2003, to the Senior Superintendent of Police, Dehradun and got the FIR registered against the appellant and three other persons. The allegation of respondent No. 3 was that the appellants in connivance with other persons had sold the part of land situated in Old Khasra No. 140 and new Khasra No. 89 which had been transferred to them by way of General Power of Attorney. The FIR was registered on 23.4.2003 as Case No. 26 of 2003 under sections 420, 467 and 120B Indian Penal Code.

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17. The High Court by order dated 16.7.2004 dismissed the petition under Section 482 Criminal Procedure Code filed by the appellants on the ground that the records show that the allegations in the FIR constitute an offence as alleged by the complainant. The said order is challenged in this appeal by special leave.

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34. In Indian Oil Corporation v. NEPC India Ltd. & Others, 2006(3) RCR (Criminal) 740 : (2006)6 SCC 736, this court again cautioned about a growing tendency in

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business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that "any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

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42. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused...

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56. Reverting to the facts of this case, we are of the considered view that the impugned judgment of the High Court in declining to exercise its inherent power has led to grave miscarriage of justice. Consequently, we set aside the impugned judgment and in order to prevent abuse of the process of the court and to otherwise secure the ends of the justice we direct that all the proceedings emanating from the FIR shall stand quashed. The appeal is disposed of accordingly. In the facts and circumstances of this case, we direct the parties to bear their own costs."

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Learned counsel for the petitioner has submitted that the petitioner is an old man of 76 years and is contesting the civil suit and has been in custody since 24.09.2021 and in the present case, the challan has not been filed and, thus, the trial is likely to take time, moreso, in view of the present pandemic situation and thus, prays for grant of regular bail for the petitioner.

Learned State counsel, along with Mr. Vipin Mahajan, learned counsel for the complainant, have opposed the application for bail. It is submitted that the petitioner had taken Rs.65,00,000/- from the complainants in order to be able to buy a rice sheller. It is submitted that the sale certificate was although in the name of the petitioner but the partnership deed had been entered into between the petitioner and the complainants. The fact that Rs.65,00,000/- was paid is also clear from the proceedings of the Income Tax Authorities. It is also stated that the said property has been sold by the petitioner for Rs.3 corers.

This Court has heard the learned counsel for the parties and perused the paper book. It is not in dispute that the civil suit has been filed by the complainant Amrik Chand along with other persons against the present petitioner for recovery of Rs.65,00,000/-. In the written statement, objections have been taken that the documents relied upon by the complainants/plaintiff are forged and fabricated and the said suit was filed in the year 2014 and is at the fag end and the petitioner had got handwriting examined in order to prove the said plea of forgery and it is thereafter that a period of 07 years since the alleged incident passed when the present FIR has been registered. The present case is apparently a civil dispute which

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has been sought to be given a criminal colour. The Civil Court would finally adjudicate upon the matter and thus, this Court does not wish to make any opinion with respect to the merits of the present case. The petitioner is an old man of 76 years of age and has been in custody since 21.09.2021 and since the challan in the present case has not filed, the trial is likely to take time moreso, in view of the pandemic situation and the co-accused of the petitioner i.e., Partap Singh has already been granted anticipatory bail vide order dated 12.10.2021 passed by this Court in CRM-M-42961-2021 and the petitioner is not involved in any other case, the present petition for grant of regular bail to the petitioner deserves to be allowed.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to his not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

November 03, 2021.

sandeep

Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No