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

CRM-M-50566-2021

Date of decision : 03.12.2021

Gagan Mahajan

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ritesh Pandey, Advocate for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.214 dated 06.11.2021 registered under Section 379 of the Indian Penal Code, 1860 at Police Station City Gurdaspur, District Gurdaspur.

Learned counsel for the petitioner has submitted that in the present case, there is a land dispute between one Nirmal Kanta and father of the complainant and for the said purpose, said Nirmal Kanta had filed a suit for permanent injunction against the father of the complainant on 01.11.2021. The said Nirmal Kanta is a close associate of the petitioner and after the said civil suit was instituted, the present FIR dated 06.11.2021 was registered. It is further argued that even as per the FIR,

the complainant had alleged that he had come to know that 4000 bricks, 2 square feet gravel and 6 bags of cement had been taken by the petitioner. It is further argued that it is apparent that the FIR was based on suspicion without the complainant having actually seen the petitioner commit the alleged theft. It is further contended that in fact, the said material is still lying at the disputed land. For the said purpose, photographs (Annexure P-3) have been referred to. It has been submitted that the petitioner is not involved in any other case. At any rate, the present dispute is a civil dispute.

Learned counsel for the petitioner has further submitted that without admitting the allegations levelled and without prejudice to his rights and only in order to show his bona fide, the petitioner is ready to deposit Rs.15,000/- before the concerned Illaqa Magistrate/trial Court/Duty Magistrate. He has further prayed that the said amount be deposited with the concerned Court and be given to the person who finally succeeds in the matter.

Notice of motion.

On advance notice, Mr. Sukhbeer Singh, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of anticipatory bail to the petitioner and has submitted that as per the FIR, the petitioner had committed theft of 4000 bricks, 2 square feet gravel and 6 bags of cement. He has however not disputed the other factual averments raised by learned

counsel for the petitioner and thus, submits that the petitioner does not deserve the concession of anticipatory bail.

This Court has heard the learned counsel for the parties and has perused the paper book.

Keeping in view the abovesaid facts and circumstances, moreso the fact that a civil suit is already pending between Nirmal Kanta (close associate of the petitioner) and father of the complainant, which was instituted prior to the registration of the FIR and also the fact that in the FIR, it had been submitted by the complainant that he “came to know” that it is the petitioner who had committed the said theft whereas, as per the version of the learned counsel for the petitioner, the material is still lying in the disputed land and the fact that the present case has civil tappings and also in view of the plea taken by the petitioner that to show his bona fide, he is ready to deposit an amount of Rs.15,000/-, and also, since the petitioner is not involved in any other case, the present petition is allowed and in the event of arrest, the petitioner is granted the concession of anticipatory bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C. However, the petitioner shall join the investigation as and when called upon to do so.

The same would be subject to the petitioner depositing an amount of Rs.15,000/- within a period of three weeks from today before the concerned Illaqa Magistrate/trial Court/Duty Magistrate. The concerned Illaqa Magistrate/trial Court/Duty Magistrate, before

whom, the amount is deposited is further directed to deposit the same in Fixed Deposit in the name of the Court in any Nationalised Bank and the said amount would be paid after the trial is finally concluded and in case, the petitioner is acquitted or the case is decided in his favour, then the money alongwith interest would be returned to the petitioner and in case, the petitioner is held guilty of the offence, then in that situation, the same would be given to the complainant alongwith the interest.

Nothing stated above shall be construed as an 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.

03.12.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**