

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

110

CRM-M-171-2022.

Date of Decision: 06.01.2022.

Parvinder Singh

....Petitioner.

Versus

Union Territory of Chandigarh

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Vivek K. Thakur, Advocate for petitioner.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Parvinder Singh** in case FIR No.31 dated 25.02.2021 under Sections 120-B, 406 and 420 IPC, registered at Police Station Mani Majra, District Chandigarh.

Learned counsel for the petitioner *inter alia* contends that version, as alleged in the FIR, is totally concocted one and there is no iota of truth therein. He further submits that allegedly petitioner alongwith co-accused namely Mewa Devi and Balbir Singh in connivance with each other committed fraud upon complainant-Anil Kumar as House No.278-O, Victoria Enclave, Bhabat, M.C. Zirakpur, was agreed to be sold to him (Anil Kumar), for sale consideration of Rs.28,00,000/-, vide agreement to sell

dated 26.02.2019 wherein accused-party had already received a sum of Rs.27,50,000/- as earnest money from the complainant, whereas later on the said house was sold by accused-party in favour of Bhajan Lal, vide registered sale deed dated 22.06.2020 and that too in utter disregard of above said agreement to sell. He further submits that aforesaid allegations are altogether false and frivolous and there is no iota of truth therein. He further submits that as a matter of fact, sale deed of house in question has been executed and got registered in favour of Bhajan Lal and that too on instructions of complainant-Anil Kumar. He further urges that co-accused Mewa Devi had received Rs.2,96,000/- from vendee-Bhajan Lal and the said amount has been credited into the account of complainant-Anil Kumar, as is evident from her statement of account (Annexure P/4). He further urges that vendee-Bhajan Lal has also furnished a declaration to the effect that he has purchased the house in question from complainant-Anil Kumar. He further urges that co-accused namely Mewa Devi and Balbir Singh, parents of petitioner, have already been extended the concession of interim pre-arrest bail by this Court, vide order dated 01.09.2021 passed in CRM-M-14984-2021. 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.

Notice of motion.

At the asking of Court, Mr. Anil Kumar Lamdharia, Additional Public Prosecutor, U.T., Chandigarh, accepts notice on behalf of respondent-U.T. Complete copy of paper book has been supplied to him.

Learned State counsel while opposing the cause of petitioner has vehemently argued that petitioner alongwith co-accused namely Mewa Devi and Balbir Singh, vide agreement to sell dated 26.02.2019, had agreed to sell House No.278-O, Victoria Enclave, Bhabat, M.C. Zirakpur, in favour of complainant-Anil Kumar and received earnest money of Rs.27,50,000/-, whereas balance sale consideration of Rs.50,000/- was agreed to be paid at the time of execution and registration of sale deed, however, despite repeated requests, they kept on delaying the matter and lateron complainant-Anil Kumar came to know that they have sold the said house to one Bhajan Lal. He further submits that in this scenario, petitioner alongwith co-accused namely Mewa Devi and Balbir Singh in connivance with each other committed fraud upon complainant-Anil Kumar and duped him of huge amount of Rs.27,50,000/-, misappropriated the said amount and further threatened the complainant with dire consequences. He further submits that petitioner could not be arrested and, thus, appearance of petitioner was sought through warrants of arrest, but to no avail. He further submits that proclamation was issued to effect appearance of petitioner, but in vain and as such he was declared 'proclaimed person' on 04.01.2022. 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 Mewa Devi and Balbir Singh in connivance

with each other committed fraud upon complainant-Anil Kumar and duped him of Rs.27,50,000/-, misappropriated the said amount and further threatened the complainant with dire consequences.

As pointed out by learned State counsel, petitioner has already been declared 'Proclaimed Person' in the instant case FIR, vide order dated 04.01.2022.

The Hon'ble Supreme Court in case 'State of Madhya Pradesh Vs. Pradeep Sharma', *Criminal Appeal No.2049 of 2013 (Arising out of S.L.P. (Crl.) No.4102 of 2013)* decided on 06.12.2013 has held that if an accused is absconding and declared proclaimed offender in terms of Section 82 Cr.P.C., the said accused should not be granted anticipatory bail.

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 now well-settled proposition of law 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

06.01.2022
jitender

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No