

102

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

CRM-M-24093-2022

Date of decision: 31.05.2022

SUBHASH CHAND

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. R.S. Rai, Senior Advocate assisted by
Mr. Manoj Kaushik, Advocate
for the petitioner.

Mr. Sumit Gupta, Addl. A.G. Haryana.

Mr. Akshay Jindal, Advocate and
Mr. Vinay Kumar Pandey, Advocate
for the complainant.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition, cast under Section 438 of Cr.P.C., seeks grant of anticipatory bail in case FIR No.113 of 16.03.2022, registered at Police Station Badshahpur, District Gurugram, wherein offences constituted, under Sections 406, 420, 467, 468, 471, 120-B of IPC, are embodied.

2. In pursuance to a registered power of attorney executed by one, Puran Manchanda, in favour of the bail petitioner herein, the latter proceeded to execute a registered deed of conveyance with one, Bhim Singh, Smt. Shail Narang, and, one, Vinod Kumar. However, the complainant, the executant of the GPA in favour of the present bail petitioner, has made an allegation in the FIR, that his purported signatures carried on the GPA rather are forged, and, fabricated, and, therefore, it is a false document. Moreover, he has alleged, that the execution of the sale

deed by the present bail petitioner is also ingrained with pervasive vices of fraudulence, as he had no authority to execute a registered deed of conveyance with the alienees concerned.

3. The registered deed of conveyance, was executed within the territorial limits of the State of Haryana, whereas, the GPA executed by the complainant in favour of the present bail petitioner, was executed at Delhi. Though, a perusal of the GPA which becomes appended, as Annexure P-3 to the present petition, and, especially of paragraph 11 thereof, which becomes extracted hereinafter, reveals that the completest authorization has been conferred, by the executant thereof, qua present bail petitioner to execute the registered deed of conveyance qua the petition property, and, also receive the monies.

“11. To execute, sign and present for registration before proper Registering Authority, proper Sale/Conveyance Deed for conveying the rights interest, liens and titles in the said land beneath the same or any part thereof in favour of the intending purchaser(s) and for the purpose of conveying the same absolutely and for ever, in favour of the intended purchaser(s) or his nominee(s), to do all other acts, deed and things which are necessary for the purpose i.e. to receive the consideration in his own name thereof and admit the receipt thereof and deliver the possession thereof to said purchaser(s) or his nominee (s) either physical or constructive as may be feasible.”

4. However, since it is contended by the learned counsel appearing for the victim, that the entire sale transaction is completely fraudulent, as his signatures, as occurring on the GPA, are forged, and, unauthentic, therefore, the above clause 11 of the GPA becomes completely meaningless. He has vehemently argued, that the questioned deed of conveyance drawn qua the petition property, and, with its causings' wrongful gains to the petitioner, and, wrongful loss to the victim,

obviously does require the present bail petitioner, being put to custodial interrogation. He argues that, not a single penny of the sale consideration became released to him by the present bail petitioner, even after his receiving certain cheques from each of the vendees concerned, containing therein sums of money, as become recited in each of them. Therefore, he argues, that the victim has been cheated, and, the entire sale consideration has been misappropriated by the present bail petitioner.

5. In that regard, the learned counsel for the victim, would be making a valid submission, only if in the above extracted paragraph, of the relevant clause carried in GPA, there was also a categorical echoing rather mandating, that the present bail petitioner, while acting as a GPA, being barred to receive the sale consideration through any mode other than cash, inasmuch as, through cheques being drawn, rather in his name, and/or, upon his receiving cash, his immediately thereafter transferring them to the victim. However, the above mandate does not occur in the above extracted clause. Therefore, when there is no express bar therein, that the cheques appertaining to the sale consideration concerned, being not drawable in the name of the present bail petitioner, but being drawable only in the name of the victim-complainant. If so, the receipt of sale consideration, by the present bail petitioner, from the vendees concerned, either in cash or through cheques drawn in his name, cannot at this stage, be concluded to be beyond or outside the ambit of the above extracted recitals, carried in the relevant clause of the GPA.

6. It appears, that apart from an attribution of guilt to the present bail petitioner, as stems from the principal not making his authentic signatures, on the GPA, that may be, the present bail petitioner, despite

receiving monies in cheques, from each of the vendors did not part with them, and/or, did not liquidate any portion thereof to the victim, hence obviously resulting in the institution of an FIR, at his instance at the police station concerned.

7. Moreover, though this Court would proceed to make directions, upon the present bail petitioner, and, also upon the victim to make their apposite sample writings, before the learned Executive Magistrate concerned, for, thereafters theirs being sent for comparisons to the handwriting expert, for his making an opinion qua whether theirs', being similar or dis-similar from/to, the disputed signatures of the principal, as carried in the GPA.

8. However, it appears from a perusal of Annexure P-8, and, P-10, that civil suits are constituted before the learned Civil Judge concerned, respectively, at the instance of the vendees of the registered deed of conveyance, and, also at the instance of the principal executant of the GPA.

9. Annexure P-8 is the civil suit instituted by the vendees of the registered deed of conveyance, wherein, they arrayed in the array of defendants also the executant of the GPA. In the above suit, they claimed the rendition of a decree of permanent prohibitory injunction, with respect to petition property, and, during the pendency of the civil suit, an order was made by the learned trial Judge concerned, upon the plaintiffs' application cast under Order 39 Rule 1 & 2 of C.P.C., order whereof is embodied in Annexure P-9, perusal whereof unfolds, that the contesting litigants becoming directed to maintain *status-quo* with respect to the possession of the petition property. The order comprised in Annexure P-9 appears to be made after a contest being made by all concerned, before the learned trial

Judge concerned, and, also appears to be made, in sequel to his meteing reverence to Annexure P-7, wherein an entry occurs that, in pursuance to the petition registered deed of conveyance, the alienees concerned, becoming ordered to be entered in the column of ownership, and, in the column of possession, of the Khasra numbers, appertaining to the petition property. Moreover, another civil suit, as, carried in Annexure P-10, has also been instituted at the instance of the executant of the GPA, arraying therein, the vendees concerned, and, also arraying therein, the present bail petitioner, besides the Sub Registrar concerned. In the above suit a challenge is made to the validity of the execution of the registered deed of conveyance, by the present bail petitioner, in favour of the alieness concerned.

10. Conspicuously, in both the civil suits, the validity of the execution of the GPA, would become the relevant issue, for evidence becoming adduced thereons, before the learned Civil Judge concerned. The relevant best evidence would be the report of the handwriting expert concerned, and, the above report, would obviously be made only after the learned Civil Judge concerned, directing all concerned, to make the relevant handwritings/ signatures, either before the Court concerned, or theirs being directed to make the relevant writings or signatures before the learned Executive Magistrate concerned. Thereafter alone, their apposite comparisons would be made hence with the disputed signatures of the executant on the GPA. Though, when the above raised controversy engaging the contesting litigants appertaining to the validity of the execution of the GPA, is subjudice before the learned Civil Judge concerned, and, would also become rested by it, but yet when even in the

instant petition, a corresponding/ similar allegation is made, against the present bail petitioner, therefore, even at this stage, the above directions are required to be made even by this Court, both upon the bail petitioner as well as, upon, the victim.

11. Be that as it may, without awaiting for the report of the handwriting expert, the imperative factum, for hence a *prima-facie* conclusion being drawn, qua whether the signatures carried in the GPA, are authentic or not, rather becomes grooved in clause 2, of Annexure P-2, which becomes extracted hereinafter. A perusal thereof visibly unfolds, that the executant of the GPA was given an intimation qua the factum of its execution, and, also qua the factum of its being entered in the relevant books, as, maintained in the office of Sub Registrar concerned. Moreover, a perusal of clause 4, which also becomes extracted hereinafter, candidly discloses, that the Sub Registrar concerned, had not *per-se* on presentation of GPA by the present bail petitioner, had taken to order for the registration of the apposite document, as became presented before him, but had sought verification with respect to the authenticity of the GPA, as, appended with the document concerned, from the Sub Registrar concerned, where its original was kept. Therefore, *prima-facie*, at this stage, it cannot be said, that there was any wanton disregard to the norm(s) of due care and caution, at the instance of the Sub Registrar concerned. Moreover, also the above extracted clause 2 of Annexure P-12, does *prima-facie* at this stage, constrain this Court to make a conclusion, that the victim, unless he proves to the contrary, did immediately on execution, of the GPA, acquire knowledge about its execution, and, if so, and, since he also did not proceed to, since 1996 upto the instant stage, draw any cancellation deed qua the

GPA, before the Sub Registrar concerned, therefore, *prima-facie*, at this stage, this Court is of the firmest view, that the dispute engaging the present bail petitioner, does hold camouflaged, and, subterranean aspects, and, *prima-facie* also may be other than the purported dispute with respect to the validity of the execution of the executant of the GPA, some mercantile disputes rather engaging the petitioner, and, the executant concerned.

“2. Original set of GPA is given to executor, and O/c of the same is pasted in our record.

3. xxx

4. Verification letter F.1/SR-V/Kalkaji/2022/588 of the abovesaid document was issued by our office, the same was requisite by Sub registrar (Kadipur) previously”

12. As above stated the pendency of the civil suits amongst all concerned, before the learned Civil Court concerned, wherein, upon the relevant issues, as may become framed, evidence would be adduced, and, findings would be returned, thereupon, it also appears that *prima-facie*, the Civil Court concerned, can proceed to make a judgment, with respect to the validity or otherwise of the execution of the GPA, at the instance of the victim, and, also upon, the further facet, whether the alienees concerned, were aware or not aware qua the purported forgery of signatures, of the executant of the GPA concerned, and, may hence raise a plea of theirs being ostensible owner(s). Therefore, even if assumingly the signatures, as made on the GPA, by its executant, are forged, or fabricated, thereupon, *prima-facie* the alienees of the sale deed, as above stated, when may rear plea of theirs being ostensible owner(s) of the petition property, and, may also adduce evidence thereon, and, may ultimately persuade the learned trial Judge concerned, to draw an appropriate conclusion in respect of the above raised plea. Consequently, *prima-facie*, at this stage the element of fraudulence, if any, gripping the questioned sale deed may not be worthy of credit.

13. However, when criminal proceedings are drawn in respect of a controversy which rather is also engaging the attention of the learned Civil Court concerned, and, may be also then, the litigation amongst the victim, and, the bail present petitioner, may also be acquiring a tenor, and, tinge of it being of a civil nature, as arises from *prima-facie* certain hidden, and, camouflaged dealings, occurring *inter-se* the petitioner, and, respondents, and, *prima-facie* may be, hence the employments of the criminal machinery, at the instance of the victim, may be to settle, certain accounts in respect of certain transactions, which may have been entered into amongst them.

14. Nonetheless, this Court for doing, the completest justice to the victim, and, to the present bail petitioner, rather than proceeding to order for the custodial interrogation, of the present bail petitioner, makes directions, upon, the present bail petitioner, to within a week from today along with the investigating officer concerned, make before the learned Executive Magistrate concerned, signatures similar to the ones, as of the executant on the GPA. Moreover, the victim shall also within a week from today along with the investigating officer concerned, appear before the learned Executive Magistrate concerned, and, shall make before him, his specimen signatures, and, also shall supply to him, his admitted/standard writings rather contemporaneous to the date when the GPA became executed. Upon the afore co-operations being meted by each, to the investigating officer concerned, thereafter he shall forthwith transmit, the specimen/admitted writings concerned, along with the disputed signatures, on the originals of the GPA, and/or, maintained in the office of the Sub Registrar concerned, and/or, on other appertaining thereto records of the Sub Registrar concerned, rather to the handwriting expert concerned, for his making their

inter-se comparisons, and, his thereafter making an opinion whether there is similarity or otherwise *inter-se* the specimen signatures of the accused, and/or, of the executant of the GPA, rather with the disputed signatures, as carried on the original of the GPA, and/or, in/with the above records maintained in the register concerned.

15. Moreover, for also doing the completest justice to the victim, it is directed that within six weeks from today, the present bail petitioner shall deposit a sum of Rs.1.50 crores in the establishment of the learned trial Magistrate concerned, and, the above deposited amount, obviously shall work towards victim compensation, and, shall be disbursed subject to the outcome trial, if any, as becomes entered into by the learned trial Judge concerned.

16. Therefore, in the event of the investigating officer concerned, proceeding to arrest the present bail petitioner, he may not arrest the bail petitioner, however, subject to his furnishing personal, and, surety bonds in the sum of Rs.2 lacs each, to the satisfaction of the arresting officer, and, also subject to his continuing to make co-operation, as, and, when his co-operation is required through a written *hukumnama* served upon him, and, with a further undertaking that he shall not tamper with prosecution evidence nor shall influence the prosecution witnesses.

17. Disposed of.

18. This order is only for the disposal of the petition, and, shall have no bearings on the merits of the case.

19. Dasti copy.

(SURESHWAR THAKUR)
JUDGE

31.05.2022

Ithlesh

Whether speaking/reasoned:-
ITHLESH KUMAR Whether reportable:-
2022.06.02 14:49
I attest to the accuracy and
authenticity of this order

Yes/No
Yes/No