

CRM-M-35134-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35134-2021
Reserved on: 07.02.2022
Pronounced on: 21.02.2022

Mithlesh Kumari ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rahul Jaswal, Advocate for the petitioner(s).

Mr. Manish Bansal, DAG, Haryana.

Mr. Minkal Rawal, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
110	24.09.2018	Bapoli, District Panipat	419, 420, 467, 471 & 120-B IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 15 of the petition, it is declared that the accused has no criminal history.
3. Ld. Counsel for the petitioner contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family. He further submits that in compliance of order dated 20.09.2021, the petitioner has joined the investigation.
4. Learned State counsel has seriously opposed the bail application and submit that they want to arrest the petitioner. He further submits that custodial investigation is also required to find out about involvement of more people who may be part of this land grabbing conspiracy and recovery is yet to be effected.

REASONING:

5. The State has filed its response by way of status report supported by an affidavit of Amit Dahiya, Deputy Superintendent of Police, State Crime Branch, Madhuban, Karnal. Para 6 is relevant which reads as under:-

"That on 31.05.2021, accused Balwan Singh son of Prem Singh and Suresh Kumar son of Ram Chander were arrested in this case and on interrogation, they suffered disclosure statements and admitted their guilt and also disclosed that on 22.06.2017 and 04.12.2017, they had got prepared the forged power of attorneys by forging the IDs of Nem Singh as Suresh and procured the forged power of attorneys in the name of fake Suresh Kumar from Janakpuri, Delhi and they had signed the said forged power of attorneys as witnesses and their photographs were also clicked through computer in this regard and that they had prepared the forged IDs of Suresh Kumar and his brothers and sisters. Accused Suresh Kumar disclosed that he had Identified the parties on the asking of co-accused Balwan. Accused Balwan Singh in his disclosure statement disclosed that he was known to petitioner Ashok Kumar and Ashok Kumar told him that there is land measuring 45 Kanals - 10 Marlas In village Bhallor, which was mortgaged by Ram Niwas Moti in the year 1947 in the name of persons residents of village Bapoll and thereafter, they had left the area and presently, the said land was in the possession of Nakil Ram. Jail Singh etc. of village Bapoll and they are also not aware about the present residence of real owners of the land and thereafter. he alongwith Ashok Kumar hatched the conspiracy to get the sale deed of said land by Impersonating the legal heirs of said Ram Niwas @Moti Ram. Thereafter. Ashok Kumar ascertained the name of children of said Ram Niwas @ Moti Ram and he made ready Nem Singh for getting the sale deed executed and thereafter, forged documents in the name of Suresh Kumar were got prepared and thereafter, Ashok Kumar got filed a case for redemption of said land through fake Suresh Kumar in the Court of SDM. Samalkha and after redemption of land, they got entered a fake power of attorney in the name of said fake Suresh Kumar pertaining to the said land by impersonating the original Suresh Kumar, his brother and sisters from Janakpuri. Delhi and in the said fake power of attorney. accused Balwan Singh and Suresh Kumar son of Ram Chander were the witnesses and at that time. they had also appended their signatures and their photographs were also clicked. Thereafter, on the basis of said forged power of attorney, they got executed the sale deed of said land measuring 45 Kanals 10 Marlas in the name of wife of petitioner namely Mithlesh Kumari wife of Ashok Kumar. He further disclosed that said fake Suresh Kumar (Nem Singh) had brought the persons. who impersonated the original brother and sisters of original Suresh Kumar with him, who were identified by them i.e. accused Balwan Singh and Suresh Kumar son of Ram Chander. He further disclosed that Ashok Kumar had got filed the case through fake Suresh Kumar in the court of SDM. Samalkha and he is only aware about the fake IDs of Suresh Kumar, his brother Ramesh Chander and sisters namely Kamlesh, Bala, Sunita etc. and he only can disclose their whereabouts. He further disclosed that he and Ashok Kumar had got opened the account No.663201504675 with ICICI Bank, Delhi in the name of said fake Suresh Kumar and in this very bank account, Ashok Kumar had transferred the money for getting the sale deed executed. He further disclosed that after the sale deed, he transferred Rs.26.00 lacs in his bank account No.663201430326 through RTGS from the bank account of fake Suresh Kumar."

6. As per para 6 of the status report, during the course of investigation the police had arrested Balwan Singh and Suresh Kumar on 31.05.2021. After that, during their interrogation they revealed that Ashok Kumar (husband of the petitioner) knew about the land measuring 45 kanals and 10 marlas and the fact that it was mortgaged by Ram Niwas in the year 1947 and details regarding its current possession. He hatched a conspiracy with Balwan Singh and Suresh Kumar. As a part of this conspiracy, Ashok Kumar filed a case for redemption of the said land through the person who impersonated as Suresh and also obtained a power of attorney by making a fraud. As a part of that conspiracy, Ashok Kumar got the land transferred in favour of his wife-Mithlesh Kumari (petitioner herein).

7. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner. Suffice to say that the petitioner and her husband apparently took advantage of lacuna and lack of digitilisation in the land ownership record system as well as the mode of transfer of ownership. The entire land was grabbed by fraudulent ways and elaborate deception. Given the area of land involved and the mode in which the land transferred in favour of the petitioner, she is not entitled to bail. Certainly It cannot be said that the petitioner-Mithlesh Kumari was unaware about it and remained silent and observed the misdeeds of her husband. Further, the recovery is yet to be effected.

8. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course

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of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In GudikantiNarasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

9. In the light of ratio of the judicial precedents mentioned above, the petitioner's case does not fall in the category of cases where bail ought to be granted.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage.

11. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed in aforesaid terms. All interim orders granting bail stand vacated.

All pending applications, if any, stand disposed.

Interim order dated 20.09.2021 is hereby recalled.

(ANOOP CHITKARA)
JUDGE

February 21, 2022
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Whether speaking/reasoned: Yes
Whether reportable: No.