

102

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

CRM-M-40596-2022

Date of Decision: 19.9.2022

Sachin @ Sachin Ahuja

... Petitioner

Versus

State of Haryana

... Respondent

CORAM:-HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.R.K.Kashyap, Advocate for the petitioner

Mr. Himmat Singh, DAG, Haryana

Mr.Viney Saini, Advocate for complainant

...

Mr. Viney Saini, Advocate appears on behalf of the complainant
and files Vakalatnama which is taken on record.

Short reply by way of affidavit filed in Court by the State is
taken on record.

The petitioner has approached this Court by filing this petition
under Section 438 of the Cr.P.C. for grant of anticipatory bail to him in FIR
No.110 dated 3.5.2022 under Sections 406, 420 of the IPC registered at
Sector 9, Ambala City, District Ambala.

Learned counsel for the petitioner, *inter alia*, contends that there
is a land dispute between the petitioner and the complainant. The matter is
purely of civil nature. It may at best be a case of specific performance and
suit is pending between the parties. But a civil dispute is tried to be given the
colour of criminal wrong doing. Learned counsel further submits that

nothing is to be recovered from the petitioner and thus no custodial interrogation is required.

On the contrary, learned counsel for the State, while referring to its short reply, submits that the petitioner alongwith other co-accused played fraud upon the complainant and duped and cheated the complainant. During the course of investigation of the case, as per photocopy of record No.8633 dated 30.3.2022, the registry of the plot in question was got executed in the name of Lakshmi Devi wife of Boota Ram by the petitioner and his brother Jatin Ahuja, inspite of the fact that the said plot was already sold by the petitioner and co-accused to the husband of the complainant- Mamta Rani and co-purchaser Gurjit Singh vide agreement to sell dated 22.4.2011 after having received a sum of Rs.6,10,000/-. Even General Power of Attorney dated 25.4.2011 was also registered in favour of the husband of the complainant and co-purchaser by the petitioner and his co-accused and without cancelling General Power of Attorney, the petitioner and his co-accused sold the plot in question to the aforesaid third person. Learned counsel for the State also submits that the investigation is at initial stage and recovery is yet to be effected from the accused persons and as such his custodial interrogation is necessary for finding out the modus operandi of commission of offence.

Learned counsel for the State, while referring to its reply further submits that the petitioner is also guile with this Court as address of the petitioner given in this petition is too old and when the Investigating Officer went to the given address then the respectable persons of the locality told him that the petitioner/accused does not live in Durga Nagar, District Ambala and

10/11 years ago, petitioner/accused and his brother Jatin Ahuja sold his ancestral house and went away from there and no one knows their present address.

Learned counsel for the complainant submits that the complainant is a widow and her husband had invested all his hard earned money in purchasing the aforesaid plot in question from the petitioner and his co-accused who have duped and cheated the petitioner by selling the aforesaid plot to third party without cancelling the General Power of Attorney already executed in favour of the husband of the complainant.

Having heard learned counsel for the parties, I am of the view that the petitioner has been specifically named in the FIR. There is specific role attributed to him that he alongwith the other co-accused has cheated and duped the complainant. There are very grave and serious allegations of fraud that after having taken full and final payment against the plot in question from the husband of the complainant and co-purchaser Gurjit Singh and without cancelling the General Power of Attorney executed in favour of the complainant, the petitioner and his co-accused sold the aforesaid plot in question to some other person on 30.3.2022. Such act and conduct is required to be viewed with all seriousness. The petitioner's custodial interrogation is necessary for complete and effective investigation. In case the same is denied to the investigating agency, it would leave many gaps and loopholes, adversely affecting the investigation, which is uncalled for. In this view of the matter, it cannot be said to be a litigation purely of civil nature, rather needs to be taken seriously. Moreover, investigation is at initial stage.

Needless to say, such type of cheating is rampant in our society and is often adopted by fraudsters, property grabbers and unscrupulous persons by selling the property of innocent people further to a third party at their back thereby usurping their hard earned money. This has become a cakewalk to amass wealth illegally over night which needs to be curbed to save the innocent people with an iron hand.

It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in **State Vs. Anil Sharma, (1997) 7 SCC 187** held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case, point towards the complicity of the petitioner and thus custodial interrogation of the petitioner is necessary and would not amount to the violation of petitioner's right under Article 21 of the Constitution.

In view of the discussion made above, the present petition being devoid of any merit is dismissed. Nothing said herein above shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

19.9.2022
MFK

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>