

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

CRM-M-54394-2022

Date of decision : 22.11.2022

Jora Singh and another

....Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Navjot Singh, Advocate
for the petitioners.

PANKAJ JAIN, J. (ORAL)

Apprehending their arrest in FIR No.227 dated 28.10.2022, registered for offences punishable under Sections 447, 379, 506, 511, 148, 149 of the Indian Penal Code, 1860 at Police Station Bhawanigarh, District Sangrur, the petitioners have preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

2. Ld. Counsel for the petitioners relies upon the Lease Deed alleged to have been executed by Gurdev Singh, grandfather of complainant Joga Singh, placed on record as Annexure P-2 and the suit for perpetual injunction to submit that the matter primarily relates to possession of land. The Petitioners are in possession on the strength of Lease Deed (Annexure P-2) and the legality of such Lease Deed is subject matter of the Civil Suit filed at the behest of the petitioners. He further relies upon the order dated 11th of November, 2022 passed by this Court whereby co-accused namely

Kulwant Singh and others were granted interim protection observing as under :-

“Learned counsel for the petitioners *inter alia* contends that Jora Singh and Jatinder Singh claimed to be in possession of the land owned by father of the complainant Pal Singh who has inherited this land from Gurdev Singh his father. The primary issue between Jora Singh, Jatinder Singh on one side the complainant party on the other side relates to possession over the suit land. The gravamen of the complainant is that the petitioners aided Jora Singh in his attempt to forcibly dispossess the complainant. The aforesaid Jora Singh and Jatinder Singh have already filed Civil suit seeking relief of prohibitory injunction against Pal Singh who admittedly is the true owner of the land. The legality of the lease deed propounded by Jora Singh and others and the issue with respect to actual possession of the land would be subject matter of such *lis*.”

3. Per contra, Mr. Navkesh Singh, Advocate appearing on behalf of the complainant submits that the petitioners are trying to usurp the land belonging to a blind person Pal Singh by forging a lease deed. Gurdev Singh Vaid father of Pal Singh who is alleged to have executed Lease Deed in favour of the petitioners was not authorized to suffer such lease as claimed. He also submits that a sum of Rs.8,50,000/- has been stated to be paid in lieu of Lease Deed that too in cash. He further submits that co-accused(s) were granted indulgence by this Court vide Annexure P-5 observing that the allegation *qua* those petitioners was only of having aided Jora Singh and others i.e., the petitioners in the present case. He, thus, asserts that the petitioners cannot claim parity *qua* Kulwant Singh and

others.

4. I have heard counsel for the parties and have gone through the records of the case.

5. Admittedly, the land in question was owned by Pal Singh. There is no document on record from where it can be inferred that Gurdev Singh was in capacity to lease the land on behalf of Pal Singh. Undisputedly, the question w.r.t. Lease Deed will be adjudicated in the *lis* pending between the parties yet merely on the strength of lease that too executed by third party having no relation with the land in question and the civil suit that too filed at the behest of the accused, they cannot be allowed to take law in their hand with an intent to dispossess the real owner.

6. As per settled law petitioners are required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In **Gurbaksh Singh Sibbia vs. State of Punjab, 1980 (2) SCC 565**, Apex Court has held that :-

“..That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the

State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail....”

(emphasis supplied)

7. Likewise while reiterating the law laid down in **Gurbaksh Singh Sibbia's case (supra)** Apex Court in **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1** held that :-

“(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it.”

8. As per settled law (**in C.B.I vs. Anil Sharma, 1997(7) SCC 187**) there is a qualitative difference between custodial interrogation and questioning a person insulated by pre-arrest bail. Investigation at this nascent stage cannot be belayed.

9. Keeping in view the allegations levelled against the petitioners and their conduct, no ground to grant them pre-arrest bail is made out.

10. Consequently, the present petition is dismissed.

November 22, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No