

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

Sr. No.111

CRM-M-817-2023

Date of decision : 09.01.2023

Anil Saini

.....Petitioner(s)

Versus

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Wazir Singh, Advocate for the petitioner(s)

Mr.Tanuj Sharma, AAG, Haryana

Mr.Fateh Saini, Advocate for the complainant

AMAN CHAUDHARY, J.

Prayer in the present petition filed under Section 438 of the Code of Criminal Procedure is for grant of anticipatory bail to the petitioner in case FIR No.203 dated 14.04.2022, registered under Sections 420, 467, 468, 471, 120-B, at Police Station City Panipat, District Panipat.

Briefly put, Complainant-Rohtash made a written complaint dated 05.01.2022, stating therein that he had purchased a plot measuring 220 sq. yards from one Baldev Singh in the year 1993, for a sale consideration of Rs.40,000/-, whereupon mutation was entered in his name. Thereafter, in the year 2004, he raised a loan of Rs.4,50,000/- from a bank against the said plot for the purpose of constructing the house. After clearance of the said loan, when he went to the revenue office to get cancelled the loan from the revenue record, he was informed that his

ownership was only of 150 sq. yards. On enquiring further in the matter, he found that someone by impersonating him as owner sold his 50 sq. yards to one Anil Kumar and the sale deed was executed on 07.10.2019, which was witnessed by Anil Saini and Dharampal in connivance with other accused. Thus, the FIR in question was registered against the accused persons.

Learned counsel submits that the petitioner has been falsely implicated in the present case having witnessed the sale deed alleged to be forged. Nothing is to be recovered from him. Co-accused Anil has already been granted anticipatory bail vide order dated 6.12.2022 passed in CRM-M-45591-2022. The petitioner is ready and willing to join the investigation and will cooperate with the investigating agency.

On the other hand, learned State counsel appearing on advance notice opposes the bail petition of the petitioner on the ground that the investigation is going on and the petitioner was given several notices to join the investigation, despite that he did not do so. Moreover, he is involved in ten more cases of similar nature i.e.

- (i) FIR No.729 dated 6.6.2014, under Sections 420, 467, 468, 471, 511, 34 IPC at Police Station City Panipat.
- (ii) FIR No.563 dated 18.10.2022, under Section 188 IPC at Police Station Killa, District Panipat.
- (iii) FIR No.363 dated 6.7.2016, under Sections 406, 420, 467, 468, 469, 471, 506, 120-B IPC at Police Station Gharaunda, District Karnal.
- (iv) FIR No.554 dated 16.9.2013, under Sections 406, 420, 506 IPC at Police Station Model Town, Panipat.
- (v) FIR No.212 dated 29.04.2013, under Sections 420, 467, 468, 471, 120-B IPC at Police Station Model Town, Panipat.
- (vi) FIR No.125 dated 15.2.2012, under Sections 420, 467, 468, 120-B IPC at Police Station Model Town, Panipat.
- (vii) FIR No.435 dated 8.9.2019, under Section 174A

- IPC at Police Station Safido, District Jind.
- (viii) FIR No.972 dated 13.9.2017, under Sections 174A IPC at Police Station City Panipat.
 - (ix) FIR No.244 dated 23.4.2019, under Sections 287, 323 452, 506 148, 149 IPC and Section 25 Arms Act at Police Station Killa Panipat.
 - (x) FIR No.112 dated 12.6.2022, under Sections 420, 467, 468, 471, 120-B IPC at Police Station Sadar Panipat.

He further states that the custodial interrogation of the petitioner is necessary to find out the unearth the truth and also his modus operandi for committing such offences.

Learned counsel for the complainant appears and vehemently opposes the prayer of the petitioner on the ground that the petitioner is a habitual offender. He has cheated the innocent persons by committing fraud.

In rebuttal, learned counsel for the petitioner admits registration of 10 cases but states that in 3 cases, he has been acquitted, in 5, no challan has been presented against him and in remaining 2, he is on bail.

Heard.

The manner in which the crime is committed, gravity of the offence, age, impact on public confidence in the justice delivery system, etc. are the factors relevant to be considered at the time of grant of anticipatory bail.

In the present case, the name and the role of the petitioner has been specifically mentioned in the written complaint, on the basis of which, the FIR in question was registered. With regard to the parity with co-accused Anil, who has been granted bail, it may be noticed that he was 19 years old at the time of execution of the sale deed, which was done by his

father, who has since passed away. The allegations against the petitioner are of having witnessed a sale deed, whereas there is impersonation, which are completely different than that against co-accused Anil, who was not privy to the said transaction done at the hands of his deceased father. Moreover, ten more cases with similar allegations were registered against the petitioner. The custodial interrogation of the petitioner is necessary to reveal the truth.

Hon'ble The Supreme Court in “**Jai Parkash Singh vs. State of Bihar**” reported as (2012) 4 SCC 379 has held as under:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record. 7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:- (i) The nature and gravity of the accusation; (ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.” 8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation. xxx xxx xxx

13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an

extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail. xxx xxx xxx

21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required.”

In the light of the judgment referred above; the gravity of offence and the antecedents of the petitioner, this Court is not inclined to grant the concession of anticipatory bail to the petitioner. Accordingly, the present petition stands dismissed.

09.01.2023
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No