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

CRM-M No.3786 of 2023(O&M)
Date of Decision: 24.01.2023

Abhay Pal Gupta and another
......Petitioners

Vs

State of Punjab
.....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. S.S. Narula Advocate
for the petitioners.

Mr. Aman Pal, Addl., A.G., Punjab.

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RAJ MOHAN SINGH, J.

[1]. The petitioners seek grant of anticipatory bail under Section 438 Cr.P.C in case bearing FIR No.01 dated 05.01.2023 under Sections 13(1)(A) read with Section 13(2) of the Prevention of Corruption Act, 1988 as amended by P.C. (Amendment) Act, 2018 and Sections 409, 420, 465, 467, 468,

471, 120-B IPC at Police Station Vigilance Bureau, F.S.-1, Punjab at Mohali, District SAS Nagar.

[2]. Learned counsel for the petitioners submits that the Government of Punjab acquired about 157.99 acres of land in Village Taraf Kumbra, Kambala, Kambali and Chilla, Tehsil Kharar, District Ropar for establishing Industrial Focal Point at SAS Nagar Mohali, Tehsil Kharar, District Ropar and the same was described as 'Industrial Estate Phase-IX, SAS Nagar'. Out of the aforesaid 157.99 acres of land, 80 acres of land was transferred to the Punjab State Industrial Development Corporation Limited (hereinafter referred to as PSIDC) for the purpose of setting up industrial projects. Out of the aforesaid 80 acres of land, PSIDC allotted 25 acres land i.e. Plot No.1, Phase IX, Mohali on 30/31.07.1984 on freehold basis to M/s Punjab Anand Lamp Industries Ltd. for manufacture of GLS Lamps & Fluorescent Tubes Project i.e. Industrial Project. There was a recital in the allotment letter dated 30/31.07.1984 that the rights of the allottee could not be transferred for a period of 15 years without permission from PSIDC. Consequently, the sale deed of the plot was executed between PSIDC and M/s Punjab Anand Lamp Industries Ltd. on 22.05.1987.

[3]. In the year 2003 under the scheme of amalgamation as provided under the Companies Act, M/s Punjab Anand Lamp Industries Ltd. was taken over by Phillips India Ltd. and the

same was approved by the High Court on 24.10.2002. The plot was transferred in the name of M/s Phillips Lighting India Ltd. on 07.04.2016. Later on, the name of M/s Phillips Lighting India Ltd. was changed to M/s Signify Innovations India Ltd. On 02.11.2020, M/s Signify Innovations India Ltd. sought NOC from PSIDC to sell Plot No.1, Phase IX, Mohali in favour of M/s Gulmohar Township India Pvt. Ltd. The file was placed before the petitioner No.1, who referred the same to the petitioner No.2 for necessary action. A legal opinion was sought from Legal Advisor, PSIDC for grant of NOC to M/s Signify Innovations India Ltd. to sell the plot. The legal opinion was received to the effect that there was no bar for PSIDC to grant permission/NOC to M/s Signify Innovations India Ltd. to sell the plot.

[4]. On 17.11.2020, approval was obtained from MD, PSIDC and the petitioner No.1 on behalf of PSIDC issued conditional NOC to M/s Signify Innovations India Ltd. for sale of plot to M/s Gulmohar Township India Pvt. Ltd. The condition was imposed by PSIDC that the plot was allotted and sold for the purpose of setting up of industrial unit and the vendee shall be bound to utilize the land for industrial purpose only in accordance with the conditions laid down in the sale deed dated 22.05.1987. The petitioner No.2 was working as a Senior General Manager, PSIDC and he retired on 30.11.2020 and later on, employed as Accounts-cum-Legal Advisor, PSIDC

w.e.f. 01.01.2021.

[5]. On 25.02.2021, sale deed was executed by M/s Signify Innovations India Ltd. in favour of M/s Gulmohar Township India Pvt. Ltd with the stipulation that the land was being sold as industrial land and that the vendee was responsible for the terms and conditions of PSIDC NOC i.e. to use the land for industrial purpose only.

[6]. In view of notification dated 27.11.2020, Punjab Small Industries & Exports Corporation (hereinafter to be referred as PSIEC) was conferred with full rights for development, management and maintenance of transferred industrial estates in compliance of Clause 4.2.2 of the Industrial & Business Development Policy 2017 (as amended on 30.07.2018). M/s Gulmohar Township India Pvt. Ltd. filed an application before PSIEC on 03.03.2021 for change of ownership in the plot on the basis of sale deed dated 25.02.2021. PSIEC sought transfer of complete records of the plot from PSIDC and after approval from MD, PSIDC, the records of Plot No.1, Phase IX, Industrial Focal Point, Mohali were transferred to PSIEC on 09.03.2021.

[7]. Learned counsel for the petitioners further submits that the role of the petitioners ended at that stage only and thereafter, they had no role to play in any manner. It was thereafter, M/s Gulmohar Township India Pvt. Ltd applied for bifurcation and fragmentation of 25 acres of plot into 125 plots

of different sizes. As per recommendation of the Committee constituted by PSIEC, bifurcation and fragmentation of plot measuring 25 acres into 125 plots was allowed to be fragmented into 125 plots on 24.03.2021 by the PSIEC.

[8]. According to the learned counsel for the petitioners, after the fragmentation also, use of the big plot into smaller plots was also for industrial purpose. The vigilance enquiry was conducted on 11.10.2022 on the premise that the Committee constituted by PSIEC has without any necessary approval and by forging the documents, made recommendation for approval of bifurcation and fragmentation of plot measuring 25 acres into 125 plots in connivance with each other and huge financial loss has been caused to the State Exchequer. The petitioners were called by the Investigating Officer by way of issuance of notices under Section 41-A Cr.P.C.

[9]. The FIR in question was registered on the basis of vigilance enquiry. Many of the nominated accused persons are still at large. The Investigating Officer again issued notices to the petitioners for 10.01.2023. The petitioners intimated the Investigating Officer that they cannot appear without approval of the Controlling Authority i.e. MD, PSIDC as the Investigating Officer required to send the intimation to the Controlling Authority. The Investigating Officer sent a letter to the Controlling Authority, requiring the presence of the petitioners,

however, the Controlling Authority intimated the Investigating Officer that the petitioners were on leave from 11.01.2023 to 14.01.2023 and told the Investigating Officer that the petitioners have already joined the enquiry earlier and provided necessary documents to the Investigating Officer. The Investigating Officer again issued letter to MD, PSIDC, requiring the petitioners to present for investigation. At that stage, the petitioners felt apprehensive and filed the petition for grant of anticipatory bail. After dismissal of the anticipatory bail by the Court of Sessions, the petitioners have preferred this petition.

[10]. Mr. Aman Pal, Addl., A.G., Punjab appears on behalf of the State/respondent on the basis of advance notice.

[11]. Learned counsel for the petitioners has reiterated the aforesaid contentions that the petitioners have nothing to do after creation of PSIEC, transfer and fragmentation of land on the basis of recommendation of the Committee constituted by PSIEC.

[12]. On the other hand, learned State counsel submits that the land measuring 25 acres was originally allotted by Punjab Small Industrial Development Corporation Ltd. to M/s Punjab Anand Lamp Industries Ltd. vide allotment dated 30/31.07.1984 for the purpose of setting up of industrial plot for GLS Lamps & Fluorescent Tubes Project. The development charges of the said plot were taken as Rs.52 lacs and conveyance deed/sale

deed was executed on 22.05.1987. The scheme of amalgamation was drawn up between PACL, Phillips Glass India Ltd. and Electric Lamb Manufactures (India) Ltd. with Phillips India Ltd. It was *inter alia* agreed that all assets of PALI including the land at Mohali would stand transferred to Phillips India Ltd. The said scheme under Sections 391 to 394 of the Companies Act was duly sanctioned by the High Court vide order dated 24.10.2002.

[13]. With reference to order dated 07.01.2016 passed by the Calcutta High Court in Company Petition No.511 of 2015, learned State counsel submits that the scheme after amalgamation became the ownership of Phillips Lighting India Ltd. PLIL submitted a letter to the Labour Commissioner, Punjab on 28.12.2018, giving reasons for the closure of the factory, where they were not able to complete the LEDF Industry with their CFL lights and filaments. M/s Phillips Lighting India Ltd. again demerged and one of the demerged companies i.e. M/s Signify Innovations India Ltd. approached PSIDC to issue no objection certificate for sale of land.

[14]. On 19.10.2020, M/s Signify Innovations India Ltd. requested the subject i.e. M/s Phillips Lighting India Ltd. in respect of NOC for sale of land at Mohali. PSIDC made a query by asking about the name of the purchasing company. M/s Signify Innovations Pvt. Ltd entered into agreement of sale with

M/s Gulmohar Township India Pvt. Ltd., by which, they committed the sale deed by 31.03.2021 before the issuance of NOC from PSIDC as per letter dated 02.11.2020, in which, they requested for permission for sale of the plot, but the said agreement is not on record.

[15]. Learned State counsel further submits that though the NOC was issued on 17.11.2020 to M/s Signify Innovations India Ltd., but Gulmohar Township India Pvt. Ltd. transferred money to Signify innovations India Ltd. and started selling plots to buyers. NOC was issued to M/s Signify Innovations India Ltd. by PSIDC with some conditions.

[16]. Learned State counsel made reference to the detailed transactions in respect of sale deed dated 22.02.2021 for consideration of Rs. 121,00,00,000/- for Industrial Plot No.1, Industrial Focal Point, Phase IX, Mohali for 25 acres sold by M/s Signify Innovations India Ltd through authorized signatory Mr. Pardeep Singh Parhar to M/s Gulmohar Township India Pvt. Ltd. through authorized signatory Mr. Jagdeep Singh through vasika dated 25.02.2021.

[17]. Learned State counsel by referring to transfer of plot from PSIDC to PSIEC on 09.03.2021, letter regarding change of ownership from M/s Signify Innovations India Ltd. to M/s Gulmohar Township India Pvt. Ltd. on 15.03.2021, application filed by M/s Gulmohar Township India Pvt. Ltd for bifurcation of

the plot along with the bifurcation fee of Rs.27,83,000/- on 16.03.2021 and the recommendation done by the Committee of officers of PSIEC submitted that huge loss has been caused to the State Exchequer and the role of the petitioners has to be ascertained after thorough investigation. The investigation is still at preliminary stage, where number of accused persons are still at large.

[18]. Learned State counsel also referred to some page Nos.133 to 142 of the notings, which have been recorded without any proposal report, project report, articles of association and memorandum of association of M/s Gulmohar Township Pvt. Ltd., without obtaining NOC from Pollution Control Board, Municipal Corporation, Electricity Board, Forest Department, Fire Brigade Department and without getting the site plan approved from any Architect. Even the examination of page Nos.141 and 142 of the notings by the Forensic Science Laboratory, does not tally with the remaining pages of the notings.

[19]. Both the learned counsel for the parties have tried to argue the case on merits.

[20]. Any observation made by this Court on merits of the case, may *prejudice* the case of either sides. Admittedly, the investigation is still pending and number of accused are still at large. The FIR in question relates to economic offences.

Economic offences constitute a distinct class, which is a class apart and needs to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds, need to be viewed seriously and considered as grave offences affecting the State Exchequer and economy of the country as a whole and thereby posing serious threat to the financial health of the country. The issue of granting bail by the Court should be based on nature of accusations, material collected by the Investigating agency and other factors like severity of punishment which ultimate conviction may entail and attending circumstances which are peculiar to the accused. Reference can be made to the ratio laid down in ***Y.S. Jagan Mohan Reddy VS. Central Bureau of Investigation, 2013(3) RCR (Criminal) 108***.

[21]. The grant of anticipatory bail to some extent interferes in the area of investigation. The Court must be circumspect while exercising such power for grant of anticipatory bail in economic offences. The right of anticipatory bail is not an absolute right and is not a part of Article 21 of the Constitution of India. The economic offences stand as a different class as they affect the economic fabric of the society. In economic offences, the accused is not entitled to anticipatory bail in routine manner. The grant of anticipatory bail at this stage of investigation, may frustrate the investigating agency in interrogating the accused

and in collecting the incriminating information and also the material, which might have been concealed. The grant of anticipatory bail, particularly in economic offences would definitely hamper the investigation of the case.

[22]. For the reasons recorded hereinabove, I do not consider this petition to be fit for grant of anticipatory bail in favour of the petitioners. This petition is accordingly dismissed.

24.01.2023 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**