

Date of decision : 17.04.2023

Petitioners

V/S

Respondent

Present: Mr. Lakhwinder Singh Mann, Advocate
for the petitioners.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

Mr. Jasmeet Singh Ghumman, Advocate
for the complainant.

ASHOK KUMAR VERMA, J. (ORAL)

1. The petitioners have filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.267 dated 25.12.2022 registered under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 at Police Station Shahkot, District Jalandhar Rural.
2. Learned counsel for the complainant has filed his power of attorney in the Court today which is taken on record.
3. Brief facts of the case are that the above-said FIR was registered on a complaint made by Ajaib Singh alleging that petitioner No.1-Bachan Singh had forged the signatures of his deceased brother namely Swaran Singh and got prepared one agreement to sell dated

08.01.2021 and further on the basis of that agreement filed a civil suit for permanent injunction and also got a stay from alienating the suit property. Petitioner No.2-Jaspal Singh, being the son of petitioner No.1, had signed on the alleged forged agreement to sell as witness and he was also privy to the fraud whereas deceased-Swaran Singh had transferred the property in question in favour of the complainant, being his elder brother.

4. Learned counsel for the petitioners submits that the petitioners have been falsely implicated in the present case by the complainant. The petitioners and deceased-Swaran Singh are close relatives as the son of Swaran Singh is married with the daughter of petitioner No.1. Deceased-Swaran Singh had entered into an agreement to sell dated 08.01.2021 with petitioner No.1 and it was decided that the sale deed will be executed till 12.04.2022 but Swaran Singh was passed away on 09.05.2021. When the petitioners came to know that complainant-Ajaib Singh, who is real brother of the deceased-Swaran Singh, had fraudulently transferred the entire land in dispute on his name vide transfer deed dated 19.04.2021, the petitioners filed a civil suit for permanent injunction restraining the complainant from alienating the suit property. Vide order dated 26.11.2021, the Court restrained the complainant from alienating the suit property. In the civil suit, the complainant appeared before the Court many times, but he did not move any application against the petitioners alleging any fraud. Nothing is to be recovered from the petitioners and their custodial

interrogation is not required in the case. The petitioners are already ready and willing to join the investigation. Therefore, the present petition may be allowed.

5. On the other hand learned State counsel assisted by learned counsel for the complainant has vehemently opposed the present petition in terms of reply dated 22.02.2023 filed by the State and submits that for thorough investigation of the case custodial interrogation of the petitioners is required. The petitioners are the habitual offenders. Petitioner No.1 is also involved in 05 other cases and petitioner No.2 is also involved in 03 other cases of similar nature. Therefore, the present petition may be dismissed.

6. Learned counsel for the complainant submits that the civil suit relied upon by learned counsel for the petitioners has already been dismissed as withdrawn vide order dated 14.03.2023 passed by learned Civil Judge (Junior Division), Nakodar.

7. Having heard learned counsel for the parties, I am of the view that the allegations against the petitioners are serious in nature. As per reply filed by the State, during inquiry it was found that Sarwan Singh was died on 09.05.2021 and he sold his 04 acres land vide sale deed dated 19.04.2021 to his brother complainant-Ajaib Singh by presenting himself before the Revenue Authorities at Tehsil Complex Shahkot and all legal formalities were complied with. The petitioners in connivance with one Dinesh Singh, who was Stamp Vendor, have arranged a Stamp Paper from Jalandhar City wherein the forged

agreement to sell dated 08.01.2021 was written. Since the alleged 04 acres land falls with the revenue jurisdiction of Tehsil Shahkot, hence, purchasing of the alleged Stamp Paper from Jalandhar appears as suspicious.

8. Furthermore, the antecedents of the petitioners are also not good as petitioner No.1 is involved in 05 other cases and petitioner No.2 is involved in 03 other cases of similar nature. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

9. Moreover, the civil suit relied upon by learned counsel for the petitioners has already been dismissed as withdrawn vide order dated 14.03.2023 passed by learned Civil Judge (Junior Division), Nakodar which also shows the mala fide intentions of the petitioners

10. The investigation is still going on and therefore, custodial interrogation of the petitioners is necessary for finding out the modus operandi of commission of the offence. 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.”

11. Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioners do not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

17.04.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No