

CRM-M-8181-2023

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(204) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8181-2023

Date of Decision: 24.04.2023

DAVINDER SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CRM-M-8144-2023

RAGHBUBIR KAUR

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sunil Chadha, Sr. Advocate with
Ms. Tanvi Dhull, Advocate
for the petitioner.
In both the petitions.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

Mr. Bhupinder Banga, Advocate for the complainant.

JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No.CRM-M-8181-2023 titled as Davinder Singh Versus State of Punjab and CRM-M-8144-2023 titled as Raghubir Kaur Versus State of Punjab as the same are arising out of the same FIR.

2. The petitioners seek the grant of anticipatory bail under Section 438 Cr.P.C in case bearing FIR No.161 dated 16.06.2022

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registered under Sections 193, 465, 467, 468, 471 and 120-B of the IPC at Police Station Division No.5, Ludhiana.

3. The brief facts of the case are that on the basis of complaints moved by Jasvir Singh son of Gurbaksh Singh came to be registered against Raghubir Kaur (petitioner in CRM-M-8144-2023) wife of Davinder Singh, Davinder Singh (petitioner in CRM-M-8181-2023) son of Gurbachan Singh and Amanpreet Kaur wife of Manoj Kumar with the allegations that the accused had prepared a forged agreement/rent deed dated 01.03.2017 along with certain forged rent receipts purportedly signed by the complainant/owner of the property leasing out the same to the accused on the basis of which the accused persons had filed a civil suit for injunction against the complainant restraining him from dispossessing them (accused) from the property in question.

4. The learned Senior counsel for the petitioners contends that the allegations as levelled in the FIR are completely baseless. In fact, the complainant-Jasvir Singh is the real brother of Jaswinder Pal Singh whose wife Harpreet Kaur was the sole proprietor of a firm M/s New Fine International. The said firm had taken a loan of Rs.1,10,00,000/- from the Bank of India and in order to secure the said amount, immovable property in the shape of residential house bearing No.137, New Dana Mandi, Saleem Tabri, Ludhiana was mortgaged and the said immovable property was in the name of the complainant-Jasvir Singh. As the firm had failed to pay back the loan amount, steps were taken by

the Bank for recovery of the amount including initiation of proceedings under the SARFAESI Act. In order to protect his (complainant's) possession, at the request of the complainant, the petitioner-Davinder Singh and his wife Raghbir Kaur had occupied a portion of the house by way of a tenancy in favour of Raghbir Kaur. Thereafter, a suit for permanent injunction restraining the complainant-Jasvir Singh from interfering in her possession was got filed by the complainant from Raghbir Kaur (petitioner in CRM-M-8144-2023). Initially *ad interim* injunction had been granted and the parties were to maintain status quo with regard to possession. Subsequently, the said suit was dismissed in default vide order dated 16.05.2018. The said order had been produced by Jasvir Singh before RB Investigation & Enforcement, an agency to whom NPA cases were entrusted by the Bank. He contends that a perusal of Annexure P-4 would reveal that it was Jasvir Singh (complainant) who had produced the status quo order before the said recovery agents which would show that the rent deed had been prepared with mutual consent so as to protect the possession of the complainant. In fact, as Jasvir Singh had been unable to return the loan amount, he firstly entered into a settlement with the Bank wherein a sum of Rs.70 lakhs was to be paid. He was unable to do so. Thereafter, he filed a civil writ petition bearing No.15475-2019 which also came to be dismissed vide order dated 21.01.2020 (Annexures P-10 and P-11). Even in the said writ petition, no reference whatsoever was made about the creation of a forged rent agreement. Further, no allegations whatsoever were levelled

against the petitioners. He therefore, contends that the civil suit was filed in the year 2017 and came to be dismissed in default in 2018 which would show that the allegations of the petitioners wanting to usurp the property is completely incorrect. Even otherwise, the possession of the property was with the complainant party. All the documents were already on record before the Civil Court. Therefore, no case for custodial interrogation was made out, moreso, when both the petitioners had already joined investigation.

5. The learned State counsel on instructions from ASI Jagdev Singh submits that the petitioners have joined investigation, though, the original rent deed has to be recovered. He however, fairly concedes that no loss has been suffered by the complainant as the complainant continuous to remain in possession of the property and the petitioners have not taken any adverse steps against the complainant pursuant to the dismissal in default of the civil suit on 16.05.2018.

6. On the other hand, the learned counsel for the complainant contends that Jaswinder Pal Singh, the brother of the complainant had connived with Davinder Singh (petitioner) and had obtained a loan amount of Rs.1,10,00,000/- from the Bank of India. The said amount had been transferred in the account of Harpreet Kaur wife of Jaswinderpal Singh. The property of the complainant had been mortgaged, even though his (complainant's) signatures were taken as a guarantor and certain forged documents were presented at that time for which he (complainant) had filed a separate complaint in which the enquiry was

pending. He has also reiterated the contents of the FIR and states that a forged rent agreement had been prepared by forging the signatures of the complainant and his wife Sukhwinder Kaur on the said rent agreement which had been used to file a civil suit for permanent injunction by the petitioner-Raghubir Kaur against the complainant. In addition, it is his contention that the present petition was the 2nd anticipatory bail petition of Davinder Singh (petitioner in CRM-M-8181-2023) and the same was not maintainable. However, on a specific query as to how any loss had been suffered by the complainant as the civil suit in question had been filed in the year 2017 and came to be dismissed in default in the year 2018, no response has been provided.

7. I have heard the learned counsel for the parties and gone through the record.

8. In the instant case, the allegations are that in the year 2017, the petitioners along with their co-accused allegedly prepared a forged rent agreement purportedly executed by the complainant party in their (accused side) favour. The said rent deed was used to file a civil suit for permanent injunction in the year 2017 which came to be dismissed in default on 16.05.2018. A perusal of the record would reveal that the injunction order of the Civil Court at Ludhiana had been produced by the complainant himself before the recovery agents (Annexure P-4) in SARFAESI proceedings. The complainant, who was a guarantor of the loan availed by his sister-in-law Harpreet Kaur wife of Jaswinderpal Singh had filed a civil writ petition before this Court challenging the

SARFAESI proceedings in which no allegation has been levelled against the petitioners. The said petition came to be dismissed (Annexures P-10 and P-11). These facts would *prima facie* establish that no attempt seems to have been made by the petitioners to usurp the property of the complainant. The property continues in the possession of the complainant party. The civil suit which came to be dismissed in default in the year 2018 was never revived. The instant FIR came to be registered on the basis of various complaints moved in the year 2020 i.e. 02 years of the dismissal in default of the civil suit.

Therefore, the contention of the learned Senior counsel for the petitioners that the purported forged rent deed had been created by the complainant side as also the petitioners and their co-accused to defeat SARFAESI proceedings initiated by the Bank against Harpreet Kaur, sister-in-law of the complainant cannot be ruled out as the property of the complainant had been mortgaged to secure the loan availed by his sister-in-law.

9. As regards the contention of the complainant that the second petition for the grant of anticipatory bail is not maintainable, it may be pointed out here that when petitioner-Davinder Singh had filed his anticipatory bail bearing No.CRM-M-31801-2022, on 25.07.2022, notice of motion had been issued for 16.08.2022. However, prior to the adjourned date, the bail application was sought to be withdrawn on account of an investigation being carried by ACP, Ludhaina *prima facie* establishing the innocence of the petitioners. However, pursuant to the

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said withdrawal, on a fresh complaint of the present complainant, the investigation was transferred to the Joint Commissioner of Police, Ludhiana. Because of the said fact, the petitioner-Davinder Singh apprehended arrest leading to the filing of the instant second anticipatory bail petition. Therefore, once the first bail application came to be withdrawn without any effective adjudication on merits, the instant bail application cannot be called a second petition for the grant of anticipatory bail.

10. It would also be relevant to mention here that the petitioners have joined investigation as per the learned State counsel. All the documents are already a part of the civil suit which otherwise stands dismissed in default on 16.05.2018. Therefore, viewed from this angle as well, no case for custodial interrogation is made out.

11. In view of the above, the present petitions are allowed and the interim orders dated 16.02.2023 & 23.02.2023 in the case of Davinder Singh (petitioner in CRM-M-8181-2023) and Raghubir Kaur (petitioner in CRM-M-8144-2023) in the same terms are made absolute. However, the petitioners shall keep on joining the investigation as and when required to do so and they shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

The petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

24.04.2023
JITESH

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