

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9510-2023 (O&M)

Reserved on: 28.11.2023

Pronounced on: 02.12.2023

Abhishek Khaneja

.... Petitioner

Vs.

State of Haryana

.... Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Prateek Gupta, Advocate, with
Mr. Shubham Pathania, Advocate, for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Mohit Kakkar, Advocate, for the complainant.

DEEPAK GUPTA, J.

By way of this petition filed under Section 438 CrPC, petitioner prays for grant of anticipatory bail in case FIR No.8 dated 04.01.2023 registered at Police Station DLF, Phase-I, Gurugram, under Sections 380, 454 and 506/34 IPC.

2. (i) FIR was lodged on the complaint of Jasmeet Singh s/o K.P. Singh, as per which he is the owner of property bearing No. B 9/2 DLF Phase-1, Gurugram. On receiving a call on 4.1.2023 that some people had broken lock of 3rd floor of his house and were committing theft by removing furniture, ACs, bed and all other house hold articles including gold in locker and cash etc. and that those people involved Abhishek Khaneja (petitioner), Preeti Khaneja, Vishal Khaneja and others, he (complainant) reached the spot, where petitioner along with others threatened him that he (petitioner) shall kill him (complainant), if he

entered the house. The articles were being removed with the help of a Mahindra Pick-Up and Hydra Crane. It was found that the material was being shifted to House No. A2/18, DLF Phase-1, Gurugram of Rahul Bansal and Sonia Bansal.

(ii) During investigation, complainant produced bills/photos of the stolen articles besides ownership documents of the house. Notices under Section 41A CrPC were issued to the petitioner-Abhishek Khaneja and co-accused, who sought time till 10.02.2023 for joining the investigation, but failed to do so. Co-accused Puneet was arrested on 15.02.2023. Some of the stolen articles were recovered at his demarcation. It was further found during investigation that petitioner is having dispute with the complainant regarding 3rd floor of House No. B-9/2, DLF Phase-I, Gurugram and that by arranging crane/pickup vehicle and labour through accused-Puneet, petitioner with others got the articles loaded in the vehicles and sent them to the house of Rahul Bansal at A2/18, DLF Phase-I, Gurugram.

3. (i) It is contended by Id. counsel that petitioner and wife of the complainant namely Gurbani Kaur were running real estate business vide a partnership deed dated 28.12.2015 in the name of Dolphin Developers, with equal shares. Petitioner had contributed towards the purchase of the plot/property in question i.e., Plot No. B-9/2, DLF City, Phase-I, Gurugram and also in the construction thereof. Petitioner had come into possession of the said property in January 2020. A Memorandum of understanding was also drawn on 09.06.2020 between the petitioner and the complainant, revealing substantial cash flow and transactions and also reference to different agreements to sell. Dispute arose in respect of that Memorandum of Understanding and the other transactions and that complainant started

threatening the petitioner and his family, compelling the petitioner to file a civil suit for permanent and mandatory injunction to protect his possession over the property in dispute. It is further contended that the property comprises of a basement, stilt parking and four floors and as per the understanding between the parties, the basement, 50% stilt parking and entire 1st floor is in possession of the petitioner and his family, who have been residing there since 27.1.2020. Complainant through his wife also filed a separate suit for possession, recovery of damages and permanent injunction bearing CS No.138/2021 regarding the property in dispute.

(ii) Ld. counsel contends that in order to give the civil dispute a criminal twist, complainant had earlier got registered FIR No.84 on 06.04.2022 at Police Station DLF Phase-I, Gurugram, under Sections 448/506/34 IPC against the petitioner and his family members, with regard to 4th floor of property i.e., B-9/2, DLF Phase-I, Gurugram and after investigation, that FIR was cancelled.

(iii) Ld. counsel contends that present FIR is also based on false allegations because petitioner is in possession of the property by way of an agreement/understanding in the course of business dealings. Ld. counsel contends further that petitioner is ready to join the investigation, and so he be allowed anticipatory bail.

4. (i) Strongly opposing the bail petition, ld. State counsel, ably supported by counsel for the complainant, drawn attention towards the civil suit, which was filed by petitioner Abhishek Khaneja himself against Smt. Gurbani Kaur, wife of the complainant, copy of which is Annexure P4. In para-No.4 of the plaint of that suit, it is candidly admitted by the petitioner that 50% of the stilt parking, 2nd, 3rd and 4th floor of the building comprised

in House No. B-9/2, DLF Phase-I, Gurugram is in possession of the defendant (Gurbani Kaur). Ld. State counsel submits that in view of this clear admission made by the petitioner himself in the civil litigation, the contention of the petitioner to the effect that he is in possession of the 3rd floor on account of some understanding, is not tenable.

(ii) Ld. State counsel further drawn attention towards final report under Section 173 CrPC as filed in FIR No.84 dated 06.04.2022 registered Police Station DLF Phase-I, Gurugram, under Sections 448/506/34 IPC, which was lodged on the complaint of Gurbani Kaur (wife of the complainant of the present case), as per which it was found that that FIR was with regard to 4th floor of the house and it was found during investigation that Puneet s/o Sashikant Pandey was residing in the 4th floor of the house after purchasing it from complainant and it is because of that reason that cancellation report was forwarded.

(iii) Submitting that custodial interrogation of the petitioner is required so as to recover the stolen property and considering direct attribution to him, prayer is made for rejecting the bail petition.

5. I have considered submissions of both the sides and have appraised the record.

6. Though petitioner contends to be in possession of 3rd floor of the house in question i.e. B-9/2, DLF Phase-I, Gurugram by way of an agreement/understanding, but ld. counsel could not point out towards any document to support this contention. To the contrary, the civil suit filed by the petitioner himself titled as ‘Abhishek Khaneja Vs. Mrs. Gurbani Kaur’ (Annexure P4) in the Court of Civil Judge (SD), Gurugram, clearly contains the admission of the petitioner to the effect that 50% of the stilt parking

besides 2nd, 3rd and 4th floor of the building of the House No.B-9/2, DLF Phase-I, Gurugram was in possession of defendant of that suit i.e. Gurbani Kaur, who is the wife of the complainant in the present FIR. There are specific allegations against the petitioner to have committed theft of various articles from the house along with other co-accused. As such, custodial interrogation of the petitioner may be required so as to recover those articles.

7. Simply because there were business relations between the petitioner and the wife of the complainant, it cannot be a ground to grant anticipatory bail, having regard to the attribution to the petitioner in the present case.

8. As such, after considering the overall facts, this Court does not find the present case to be fit for grant of anticipatory bail.

Dismissed.

(DEEPAK GUPTA)
JUDGE

02.12.2023

Vivek

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	No