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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-27653-2023in/and
CRM-M-10011-2023
Date of decision :02.08.2023

MANJU SONI

... Petitioner

Versus

STATE OF HARYANA & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Saurabh Goel, Advocate
for the petitioner.

Mr. Rajiv Goel, DAG, Haryana.

Mr. Rose Gupta, Advocate and
Ms. Garima Modi, Advocate
for the complainant.

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JASJIT SINGH BEDI, J.

CRM-27653-2023

This is an application filed under Section 482 Cr.P.C. for preponement of the date of hearing in the case i.e. fixed for 02.08.2023.

As the aforesaid CRM-27653-2023 is listed for today itself for hearing, the present application has become infructuous.

Hence, the present application is disposed of as having been rendered infructuous.

CRM-M-10011-2023

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.0890 dated 18.10.2022 registered under Sections 120-B, 406, 420

IPC and Sections 467, 468, 471 added later on at Police Azad Nagar, Hisar.

2. The brief facts of the case leading to the registration of the instant FIR are that an application was submitted to the Senior Superintendent of Police, Hisar for registration of an FIR against accused No.1-Mahender Singh, accused No.2-Manju Soni (petitioner) wife of Mahender Singh, accused No.3-Ajay son of Mahender Singh, accused No.4-Patwari Halqa Village Gangwa and certain other accused. As per the allegations, respondent No.2-Manti Devi wife of the complainant-Kuldeep Singh (respondent No.1) had purchased a House No.12-B, measuring 9 marlas at Village Gangwa on 22.03.2010 from accused No.2 (petitioner-Manju Soni) wife of Mahender Singh. The said property had been mortgaged with the Oriental Bank of Commerce, Urban Estate-2, Hisar for availing a loan of Rs.60 lakhs. A revenue entry had also been made in that regard. Manju Soni (petitioner) along with her husband (accused No.1-Mahender Singh) prepared a forged letter dated 28.03.2013 purported to be issued by an officer of the Oriental Bank of Commerce and in connivance with accused No.4-Halqa Patwari showed that the loan had been cleared and therefore, an amendment in the revenue record was made. The petitioner-Manju Soni knowing that the above plot had been mortgaged sold half share of the plot to Dharambir for Rs.7,29,000/- and half share to Sanjeev Malik. Another share was transferred in favour of Mahender Singh by way of a release deed. Accused No.1-Mahender Singh transferred 100 Sq. yards of the said plot No.12-B in the name of respondent No.2-Manti Devi, the wife of the

complainant vide sale deed dated 14.06.2017 for a consideration of Rs.6,50,000/-. On the same day, Mahender Singh transferred 50 Sq. yards in favour of his son accused No.3-Ajay vide a release deed. Mahender Singh in fact was an owner of 122 Sq. yards in plot No.12-B and 100 Sq. yards had been transferred in the name of respondent No.2-Manti Devi, the wife of the complainant and 30 Sq. yard in favour of his son. Thereafter, Ajay, accused No.3 son of Mahender Singh sold 15 Sq. yards in favour of respondent No.2-Manti Devi for a sum of Rs.1,65,000/-. The said old house had been repaired by putting tiles and marble on the floor along with doors and windows. Manti Devi had further sold the above plot to Pushpa Devi, the wife of Vikas. A few months ago the employees of the Bank had come to the spot and had told the said Pushpa Devi that the above plot had been mortgaged to the Bank and she was to vacate possession. This fact was narrated by Pushpa Devi to the complainant who approached the SP, Hisar but no legal action was taken. Apparently, accused Nos.1 and 3 were aware that the area of House No.12-B was 243 Sq. yards which had been mortgaged by accused No.2 (petitioner) vide deed No.16075 dated 12.02.2013 with the OBC Bank and the said mortgage had never been redeemed. However, the accused in connivance with each other along with the revenue officials had forged and fabricated letters and records to show that the loan had been repaid and thereafter sold the property thereby cheating the buyers. Legal action was sought.

3. The learned counsel for the petitioner contends that the petitioner-Manju Soni, wife of Mahender Singh and her co-accused

Mahender Singh along with Ajay son of Mahender Singh have been falsely implicated in the present case. Respondent No.2-Manti Devi had already sold the land in question to one Pushpa Devi and therefore, the present FIR at the instance of Kuldeep Singh, the husband of Manti Devi was not maintainable. The letter dated 28.03.2013 which was issued by the officials of OBC Bank, Hisar on the basis of which the revenue record was changed to show that the loan had been repaid cannot be said to be forged as the report of the handwriting expert was not available. The husband and son of the petitioner had filed a civil suit against the complainant party for declaration that the sale deed in favour of Manti Devi was without transfer of sale consideration and therefore, illegal and consequently *null and void ab initio*. Notice had been issued in the said civil suit. The husband and son of the petitioner had also made a complainant to the SHO, Azad Nagar, Hisar against the present complainant party as also Smt. Pushpa Devi for playing fraud with the petitioner as they had not paid any sale consideration. Be that as it may, the petitioner was ready and willing to make the requisite payment to the Punjab National Bank in terms of the OTS proposal dated 18.05.2023 (Annexure A-3). He, therefore, contends that no case for custodial interrogation was made out and the petitioner was entitled to the concession of pre-arrest bail, moreso, as her co-accused had been released on regular bail.

4. On the other hand, the learned State counsel while referring to the reply dated 25.03.2023 contends that the offeence is established beyond doubt. During the course of the investigation, records pertaining

to the loan had been obtained from the Bank. As per the letter issued by the Branch Manager, PNB Bank, MCB Branch to the DSP, Hisar the said land was held as security in the nature of an equitable mortgage and as per the bank records for the loan availed by the petitioner and the property was still mortgaged to the Bank. The question of issuing a No Objection Certificate by the Bank did not arise. Information was also obtained from the revenue officials and it transpired that the petitioner had herself produced a faq letter (no objection certificate) before the Patwari and on the basis of the said faq letter, the entry was made in the register by the Patwari bearing Rapat No.554 (Annexures R2 & R3). Apparently, the petitioner along with her co-accused had prepared the forged letter purportedly signed by official of the Bank, presented the same before the Patwari after which the entries of loan were deleted from the revenue record with respect to the property in question. As the offence of forgery and cheating had been *prima facie* established, the petitioner was not entitled to the grant of anticipatory bail.

5. The learned counsel for the complainant has vehemently opposed the grant of pre-arrest bail to the petitioner. He contends that the property had been sold to the complainant party by showing that it was free for encumbrances when in fact, the mortgage had not been redeemed and the loan amount had not been repaid. Therefore, the complainant party had been cheated by the accused as they purchased the same for valuable consideration, spent money to renovate it and sold it further. As the nature of the allegations levelled against the petitioner and her co-

accused were grave and the investigation was to be taken to its logical conclusion, no case for the grant of anticipatory bail was made out.

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

7. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** **2022 Live Law (SC) 870** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

> "*It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.*
>
> *Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.*
>
> *We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the*

accused should be quashed and set aside. ***In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail***.

8. Coming back to the facts of the present case, it is apparent that the accused had availed a loan of Rs.60,00,000/- and mortgaged the land in question. Thereafter, by forging a letter no objection certificate purportedly issued by the Bank, they presented the same to the Patwari who made the necessary correction in the revenue record to show that the loan amount had been repaid and the property was free from encumbrances. Thereafter, the property was sold to the complainant party who have further sold it ahead. The investigation conducted so far has

prima facie established the commission of the offence on the part of the petitioner who was the owner of the property as also her husband and son. As the offence has been *prima facie* established and the investigation is to be taken to its logical conclusion, the custodial interrogation of the petitioner is certainly necessary.

9. In view of the above, I find no merit in the present petition and the same stands dismissed.

10. However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

02.08.2023
JITESH