

CRM-M-13485-2023
CRM-M-13488-2023

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-13485-2023 (O&M)
Date of decision: 17.03.2023

MUBARAK SINGH BANWAIT

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CRM-M-13488-2023 (O&M)

PRABHJYOT SINGH SAINI

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. G.S. Kaura, Advocate for the petitioners.

AMAN CHAUDHARY. J.

This common order shall dispose of above mentioned two petitions as they arise out of the same FIR.

Present petitions have been filed under Section 438 CrPC for grant of Transit bail for 15 days to the petitioners to enable them to join the proceedings before the investigation officer as well as to surrender before the competent court of law at Mumbai, Maharashtra in FIR/C.R. No.419/19 under Sections 417, 420, 448, 465, 467, 468, 471, 341 IPC read with Section 34 IPC dated 20.11.2019 registered at Police Station Juhu, District Mumbai, Maharashtra.

Brief facts of the case as emerge from the FIR are that accused viz. Kandndale Ramesh Rao and his other concerned associates in collusion with each other, prepared bogus unregistered agreement and gift deed in respect of certain portion of Nalanda Shopping Center owned by the complainant, and by using the said agreement and gift deed as valid document, encroached upon the Nalanda Shopping Center and sold the same to other persons under various registered sale deeds and cheated the complainant and others, on the basis of which FIR in question was registered.

Learned counsel contends that the names of the petitioners did not figure in the FIR. They have however been shown as accused in the final report filed under Section 173 CrPC. Their co-accused, namely, Pardeep Bharat Maurya, Sachin Eknath Pawar, Pravin Jagannath Kamathe and Amritpal Singh have been granted regular bail by the Court of Sessions at Goregaon, Mumbai. The petitioners stated to be presently in the State of Punjab, are such seeking transit bail for 15 days.

Heard.

Petitioner-Mubarak Singh Banwait, is stated to be the Director of M/s Bollyfood Hospitality Private Limited, U-Ground Floor, Shopping Centre, JVPD Scheme, VM Road, Vile Parle, West Mumbai, who purchased commercial units measuring about 424, 550 and 434 sq. ft, and similarly, petitioner-Prabhjyot Singh Saini a unit of 308 sq. ft from co-accused Kadandale Ramesh Rao, whose name has been mentioned in the FIR.

A perusal of the memo of parties in the petition, makes it apparent that both the petitioners are residents of Maharashtra. Petitioner-Mubarak Singh Banwait is residing at Plot No.4, Waheguru Pariwar, Sector No.5, Shreenagar Gurudwara, Shreenagar Wagle Estate, Thane Maharashtra, while petitioner-Prabhjyot Singh Saini at A-4/3-3, Alak CHS, near Gurudwara, Sector-19A, Nerul East Navi Mumbai, Thane Maharashtra.

It is profitable to make a reference to the judgment of Delhi High Court in the case of **Honey Preet Insan v. State and another**, 2017 SCC Online Del 10690, wherein the application filed for grant of transit bail in FIR lodged in State of Haryana was rejected by observing that, grant of anticipatory bail under Section 438 Cr.PC is matter of a judicial discretion which have to be exercised on circumspection and the court has to satisfy that the application seeking bail has been made on bona fide grounds and there is no manipulation and maneuvering on the part of the applicant for artificially creating the jurisdiction for the court. Whenever, an application for anticipatory bail is made before a Court, where an FIR has been lodged elsewhere i.e. outside the territorial jurisdiction of that Court, the Court is duty bound to consider whether the applicant is a regular or bona fide resident of a place within the local limits of that Court and is not a camouflage to evade the process of law. If the Court is not satisfied on this aspect, the application deserves to be rejected without going into the merits of the case.

It is axiomatic from the petitions as well as the Aadhar cards appended therewith, that both the petitioners are the residents of State of Maharashtra, where the FIR has been registered. No reason has come forth that they cannot effectively avail of their remedy by filing an application before the appropriate Court in the State of Maharashtra, as has been done by their co-accused. Merely by stating that they are presently in the State of Punjab is no ground to invoke the jurisdiction of this Court. The petitions, thus, lack bona fide and appear to have been instituted as a subterfuge to circumvent the process of law. The petitioners are still at liberty to approach the Court of competent jurisdiction.

In view of the aforesaid discussion, the present petitions, stand dismissed.

A photocopy of the judgment be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

March 17, 2023
M.Kamra

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