

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16312-2023 (O&M)

Date of decision :01.08.2023

SUKHMANPREET BATH & ANOTHER

... Petitioners

Versus

STATE OF UT CHANDIGARH & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.K. Garg Narwana, Sr. Advocate assisted by
Mr. Vishal Garg Narwana, Advocate,
Mr. Rajat Sheokhand, Advocate and
Mr. S.S. Siwach, Advocate
for the petitioners.

Mr. Amit Kumar Goyal, APP U.T., Chandigarh.

Mr. S.S. Narula, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioners in case FIR No.201 dated 19.06.2017 registered under Sections 420 & 120-B IPC at Police Station South Sector 34, Chandigarh.

2. The brief facts of the case are that an agreement to sell of House No.1142, Sector 44-B, Chandigarh was executed by Mrs. Anjuly Chib Duggal in favour of the petitioners for an amount of Rs.2 crores on 30.01.2011. The copy of the agreement is attached as Annexure P-2 to the petition.

3. Meanwhile the petitioners entered into a joint venture agreement with respondent No.2-complainant. A sum of Rs.1 crore was paid by the complainant and it was resolved that after the sale deed was executed, both the parties would be 50% owners each. The copy of the joint venture agreement dated 08.05.2021 is attached as Annexure P-5 to the petition. On the same day, an agreement to sell of 50% of the house was executed by the petitioners in favour of the complainant on the receipt of Rs.1 crore and the sale deed was to be executed after reconstruction. The copy of the agreement is attached as Annexure P-4 to the petition.

4.. Thereafter, a sale deed was executed by Mrs. Anjulu Chib Duggal in favour of the petitioners on 27.05.2011 (Annexure P-3). The petitioners, however had taken a loan of Rs.82 lakhs from the State Bank of Patiala, Sector 22-B, Chandigarh by creating an equitable mortgage of the entire property by claiming that the property was self-acquired and no other person had any interest in the said property and nor was their any subsisting agreement to sell of the said property. The copy of the letter dated 29.05.2011 addressed by the petitioners to the Bank is attached as Annexure A-4.

5. After paying some instalments, when the petitioners were unable to repay the loan, symbolic possession was taken by the Bank on 06.01.2014.

6. Faced with the said situation, respondent No.2-complainant filed a complaint with the IG, Chandigarh Police on 20.01.2014 (Annexure P-6) stating that the petitioners had cheated him. The said complaint was inquired into and the DSP, EOW, U.T., Chandigarh vide

his report dated 25.03.2014 (Annexure P-7) came to the conclusion that no cognizable offence was made out as the matter was purely civil in nature and the petitioners had always been and ready and willing to execute the sale deed for 50% share of the property in favour of respondent No.2-complainant after receiving the balance amount of Rs.50 lakhs. The copy of the report of the DSP dated 25.03.2014 is attached as Annexure P-7 to the petition. The SSP, Chandigarh endorsed the report of the DSP, Chandigarh vide his report dated 11.11.2014 (Annexure P-9).

7. Thereafter, both the parties appointed an Arbitrator and a consent award was passed on 27.03.2015 (Annexure P-10) as per which the petitioners were to negotiate with the bank and subsequent thereto, the entire amount of the loan was to be paid by respondent No.2-complainant subject to a maximum limit of Rs.82 lakhs. The copy of the award is attached as Annexure P-10 to the petition.

8. However, the State Bank of Patiala, Sec-22B, Chandigarh auctioned the property in April/May, 2015 for an amount of Rs.1,91,70,000/-. After clearing all the dues, the Bank gave a sum of Rs.72 lakhs to the petitioners who retained the same.

9. Thereafter, a complaint was made to the IG, Chandigarh Police on 18.05.2015. Subsequent thereto, the instant complaint came to be instituted under Section 156(3) Cr.P.C. on 04.05.2017 and the JMIC, Chandigarh directed for the registration of the FIR vide order dated 14.06.2016 (Annexure P-17). As per the allegation in the FIR, the complainant had been cheated as the petitioners had not acted upon either the Joint Venture Agreement or the agreement to sell, both

executed between the petitioners on the one hand and the complainant on the other. The respondent No.2-complainant had paid an amount of Rs.1 crores plus a further amount of Rs.50 lakhs and Rs.25 lakhs thereby totaling Rs.1.75 crores to the petitioners. On the other hand, the petitioners had mortgaged the entire property without disclosing it to respondent No.2-complainant or to the Bank that the said property was a subject matter of a joint venture agreement and an agreement to sell. Further, the terms of the arbitration agreement had also not been complied with. The petitioners who had taken the loan were to negotiate with the bank regarding redemption if any and it was only then that respondent No.2-complainant was to pay a total amount of Rs.82 lakhs to the Bank. However, the petitioners did not approach the Bank in terms of the arbitration award. The property was therefore auctioned and the sum of Rs.72 lakhs received by the petitioners was retained by them without anything being given to respondent No.2-complainant.

10. The learned Senior counsel for the petitioners contends that the petitioners have been falsely implicated in the present case. As per the report of the DSP, Chandigarh, the matter was purely a civil dispute between the parties. The said report had been endorsed by the SSP, Chandigarh. A civil suit was pending between the parties for specific performance/recovery. It was respondent No.2-complainant who had not adhered to the terms of the consent award by making a payment of Rs.82 lakhs to the Bank because of which the property was auctioned. The petitioners had also spent a huge amount of money to raise some construction, pay the loan instalments and also register the property in their name. As the case was based on documentary evidence and the

petitioners had joined investigation, no case for custodial interrogation was made out and therefore, the petitioners deserved the concession of pre-arrest bail.

11. On the other hand, the learned State counsel has filed a reply dated 28.07.2023 by way of an affidavit of Ms. Niyati Mittal, Deputy Superintendent of Police, Economic Offences Wing, Sector 17, U.T., Chandigarh. The same is taken on record. While referring to the reply, he contends that as per investigation, the complainant had not only made a payment Rs.1 crore but had made an additional payment of Rs.16.5 lakhs for the purchase of stamp duty and a further amount of Rs.50 lakhs as demanded by the petitioners from time to time. The loan had been obtained by the petitioners from the State Bank of Patiala, Chandigarh and while availing the loan and mortgaging the property, in the undertaking to the Bank on 29.05.2011, it was not disclosed that the complainant had an equal interest in the property and that there was a subsisting agreement for sale of the same. The petitioners had not provided any evidence that the loan procured from the Bank was in the knowledge of the complainant. Subsequent to the possession on 06.01.2014, after the property had been sold in an auction in April/May, 2015, an amount of Rs.72 lakhs was received by the petitioners who retained the same thereby causing wrongful loss to the complainant. The petitioners also did not comply with the consent/compromise deed as there was absolutely no evidence on record to suggest that they had negotiated with the Bank in order to stop SARFAESI proceedings of the house in question. He, thus, contends that though the petitioners had joined investigation, they were not entitled to the concession of

anticipatory bail as the offence of cheating of the complainant at the instance of the petitioners of a huge amount of money was *prima facie* established.

12. The learned counsel for respondent No.2-complainant while referring to his application for vacation of the interim order of stay of arrest dated 29.03.2023 contends that the complainant had admittedly paid an amount of Rs.1 crore at the time of the agreement to sell/joint venture. Rs.50 lakhs was to be paid later at the time of execution of the sale deed after construction had been completed. However, the said amount was paid along with a further amount of Rs.25 lakhs totaling Rs.1,75,00,000/-. However, unknown to the complainant, the petitioners had availed a loan of Rs.82 lakhs from the State Bank of Patiala, Sec-22B, Chandigarh on 29.05.2011 by mortgaging the entire property claiming to have sole interest in the same without disclosing to the Bank that there was an agreement to sell and a joint venture agreement of the property with the complainant. He contends that the inquiry reports had wrongly recorded that the complainant had failed to pay an additional amount of Rs.50 lakhs and the petitioners were ready and willing to execute the sale deed if the said amount was paid. In fact, that the additional amount of Rs.50 lakhs was to be paid after the construction had been completed and the property had been sold. The inquiry reports of the DSP and SSP were dated 25.03.2014 and 11.11.2014. As the property had already been taken over by the Bank on 06.01.2014, when the petitioners had made a statement to the Police that they were ready and willing to execute a sale deed for an amount of Rs.50 lakhs that statement was made just to protect themselves since the sale deed could

never had been registered as the same was mortgaged and had been attached. Be that as it may, the complainant had paid an additional amount of Rs.75 lakhs. He also contends that so far as the arbitration award was concerned, the complainant did not make the payment as it was the petitioners who were to negotiate with the Bank regarding the SARFAESI proceedings as per the terms of the award as they had availed the loan in question. There was absolutely nothing to suggest that the petitioners had ever approached the Bank to negotiate on the redemption or otherwise and therefore, there was no question of the complainant paying Rs.82 lakhs to the bank. In fact, the consent award was passed on 27.03.2015 whereas the Bank auctioned the property within one month on 24.04.2015. Pursuant to the auction of the property for an amount of Rs.1,91,70,000/-, after adjusting all the dues, the Bank had paid sum of Rs.72 lakhs to the petitioners which they had also pocketed without giving a rupee to the complainant. Admittedly, at the very least, the complainant had paid sum of Rs.1 crore which was half of the sale consideration of Rs.2 crores. On the other hand, the petitioners had only paid a sum of Rs.18 lakhs and had availed a loan of Rs.82 lakhs by mortgaging the property. Therefore, while the complainant had not got even one rupee pursuant to the auction or from the petitioners, the petitioners who had spent only Rs.18 lakhs had received a sum of Rs.72 lakhs from the Bank.

Post the registration of the FIR, the petitioners had sought the concession of anticipatory bail which had been declined by the Court below on 03.07.2017 (Annexure P-11). They immediately approached this Court by way of a quashing petition in which a patently false

statement had been made that the Magistrate had not passed any order to register an FIR and based on the said statement, an interim order of stay of proceedings was passed in the said quashing petition. However, the said petition had been subsequently dismissed by this Court vide a detailed order dated 21.03.2023 (Annexure A-3). A categorical findings had been arrived at, that the petitioners had got transferred the property in their name but had failed to demolish and start construction. They had obtained a loan without the consent and knowledge of the complainant. After the said property had been sold in an auction, Rs.72 lakhs had been wrongfully retained by the petitioners and nothing had been paid to the complainant despite the complainant having spent Rs.1 crore at the least and the petitioners having spent only Rs.18 lakhs. Therefore, the offence had been *prima facie* established and could not be said to be only civil in nature.

He thus contends that keeping in view the facts and circumstances of the case, the offence was *prima facie* established and since the complainant had been cheated are of a huge amount of money, the petitioners were not entitled to the concession of pre-arrest bail.

13. I have heard the learned counsel for the parties and examined the record

14. 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.

15. Coming back to the instant case, the factual position is that at the very least, the complainant had paid an amount of Rs.1 crore at the time when an agreement to sell and a joint venture agreement was executed between the parties. That Rs.1 crore was utilised by the petitioners to purchase the property from the original owner. However, neither of the agreements were given effect to inasmuch as no substantial construction took place. On the contrary, unknown to the complainant, the petitioners had availed a loan of Rs.82 lakhs from the State Bank of Patiala, Sec-22, Chandigarh on 29.05.2011 by mortgaging the entire property claiming that it was self-acquired and no other person had any interest in the said property despite the fact that there was subsisting agreement to sell and a joint venture agreement both dated 28.05.2011. Thereafter, they deliberately made a false statement to the investigation agency stating that they were ready and willing to execute the sale deed in favour of the complainant on a further payment of Rs.50 lakhs without disclosing that the said amount of Rs.50 lakhs was to be paid only upon completion of construction and that the question of a sale deed being executed did not arise as the property had been taken possession of by the Bank on 06.01.2014. Further, even the terms of the consent award dated 27.03.2015 were not adhered to by the petitioners. They were to

negotiate with the Bank with respect to the SARFAESI proceedings consequent to which the complainant was to pay a maximum amount of Rs.82 lakhs to the Bank. However, as per investigation there is absolutely no evidence that the petitioners ever approached the Bank for re-negotiation of the loan. Even subsequent to the auction on 24.04.2015, the petitioners received an amount of Rs.72 lakhs and retained the entire amount without paying anything to the complainant. Thus, it is apparent that while the complainant had spent an amount of Rs.1 crore at the very least, the petitioners had spent only Rs.18 lakhs, availed a loan of Rs.82 lakhs and pursuant to the sale of the property received Rs.72 lakhs and retained the said amount. Further, the conduct of the petitioners is also not above board. When the petition for quashing of the FIR was filed, an interim order was passed on the arguments raised that the Magistrate had not ordered the registration of an FIR on a complaint under Section 156(3) Cr.P.C. though a perusal of the order of the Magistrate would show that he had categorically directed the SHO concerned to register an FIR. This Court while dismissing the quashing petition had also recorded certain findings which clearly establish the *prima facie* culpability of the petitioners.

16. Keeping in view the judgment in *Sumitha Pradeep* (supra) and the observations made hereinabove, as the offence stands *prima facie* established, the complainant appears to have suffered a huge loss and the conduct of the petitioners is also not above board, no ground for the grant of anticipatory bail is made out. Therefore, the present petition stands dismissed.

17. 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**

01.08.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No