

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

104

CRM-M-17424-2023
Decided on : 13.04.2023

PAWAN KUMAR LEHNA

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

PRESENT: Mr. Vaneet Kumar Sharma, Advocate
for the petitioner.

AMAN CHAUDHARY, J.

1. Present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in FIR No. 0079 dated 29.03.2023, under Sections 120-B, 420, 467, 468 and 471 IPC registered at Police Station Sadhaura, District Yamuna Nagar.

2. Briefly put, the facts of the case are that, one Rikhi Ram was the owner of a shop situated at village Sadhaura and had seven legal heirs. He executed a Will dated 19.12.1995 in favour of one of his son, namely, Basant Kumar, who entered into an agreement to sell dated 31.07.2012 in favour one Sahil, who is son of the petitioner. The revenue record register of Panchayat was got updated by said Basant Kumar on filing an application along with the Will dated 19.12.1995. A civil suit was filed before the trial Court, Bilaspur which was decreed in favour of Sahil as per which, he became the owner of said shop after paying consideration amount of Rs.7,75,000/- to above Basant Kumar. Thereafter,

Sahil transferred the said shop in favour of his brother Robin through transfer deed No. 1084 dated 27.02.2017 and it was executed on the basis of decree passed by the Civil Court, Bilaspur. Thereafter, said Robin sold the said shop in question to one Jagdish Chand-complainant and his daughter Sonia through registered sale deed No.1105 dated 06.03.2017 for a consideration amount of Rs.8,20,000/-. In the meantime, Balbir Singh, Jagdish Chand and Usha being LRs of Rikhi Ram filed a Civil Suit No. 290 of 2017 dated 08.05.2017 challenging the Will dated 19.12.1995 and subsequent sale deeds. The said suit was decreed vide judgment dated 24.11.2021 and the Will dated 19.12.1995 along with subsequent sale deeds were set aside by the trial Court. On the basis of the said decree, the complainant has taken legal action against the accused-petitioner and five others by lodging the present FIR on 29.3.2023, on the allegations that the petitioner along with his co-accused in conspiracy with each other have sold one shop to the complainant with the assurance that ownership of said shop is free from all encumbrances. Furthermore, it was alleged by the complainant that the accused have cheated him and his daughter and misappropriated an amount of Rs. 20 Lakhs.

3. Learned counsel submits that it is a case of civil nature, however, given criminal colour, as there is a remedy of filing a suit for recovery. The possession of the shop in question is with the complainant. The petitioner has been falsely implicated in the present FIR only on account of he being the father of co-accused Sahil. He is not the beneficiary of any transaction. There is inordinate delay in lodging the FIR, as the sale deeds had been executed in the year 2017. The petitioner is ready to join the investigation and thus, it is requested that he may be granted the concession of anticipatory bail.

4. On the other hand, learned State counsel assisted by learned counsel for the complainant submits that the petitioner had dishonest intention from the very inception to commit fraud upon the complainant. He usurped an amount of Rs.20 lakhs from the complainant and his daughter. The allegations against the petitioner being serious in nature, recovery of the huge amount has to be effected for which his custodial interrogation is required. The petitioner being living in the same vicinity, there is a possibility of influencing and threatening the witnesses.

5. Heard.

6. It would be worthwhile to refer to the judgment of Hon'ble The Supreme Court in **Jai Parkash Singh vs. State of Bihar** (2012) 4 SCC 379, wherein while relying on the judgments in the cases of **D.K Ganesh Babu vs. P.T Manokaran**, (2007) 4 SCC 434, **State of Maharashtra vs. Mohd. Sajid Husain Mohd. S. Husain**, (2008) 1 SCC 213, and **Union of India vs. Padam Narain Aggarwal**, (2008) 13 SCC 305, it was held thus:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record.

7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:-

(i) The nature and gravity of the accusation;

(ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice;

and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation.

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13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

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21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required.”

7. The manner in which the crime is committed, gravity of the offence, impact on public confidence in the justice delivery system, etc. are the factors relevant to be considered at the time of grant of anticipatory bail.

8. There are specific allegations levelled in the FIR against the petitioner and his son regarding fraud and forgery having committed by them. The petitioner has played an active role in the entire transaction, which is required to be thoroughly investigated. The petitioner in connivance with the co-accused have cheated the complainant and his daughter as also are the allegations of having

caused wrongful loss to them amounting to Rs.20 lakhs, which are still to be recovered. The investigation is at a nascent stage. The custodial interrogation of the petitioner is required to bring forth the true facts of the crime before the Court, as the petitioner is stated to have played a key role in the transactions regarding the property in question.

9. In the case of **P. Chidambaram vs. Directorate of Enforcement**, (2020) 13 SCC 791, Hon'ble The Supreme Court has observed that, "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

10. On anvil of the aforesaid facts and circumstances of the case and the judgments referred to hereinabove, no ground is made out to grant the extraordinary relief of anticipatory bail to the petitioner-accused. Accordingly, the instant anticipatory bail application is liable to be dismissed.

11. Resultantly, the present petition is dismissed.
12. Needless to say, that observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

13.04.2023
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No