

CRM-M-19561 of 2023

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

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Reserved on: - 26.05.2023
Date of pronouncement: - 02.06.2023

Tajinder Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Chetan Mittal, Senior Advocate,
with Mr. Gaurav Mohunta, Advocate, and
Mr. Mayank Aggarwal, Advocate,
for the petitioners.

Mr. Jashanpreet Singh, DAG, Punjab.

Mr. P.S. Ahluwalia, Advocate,
for the complainant.

NAMIT KUMAR, J.

1. This petition has been filed by the petitioners under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.17 dated 17.02.2023 under Sections 420, 467, 468, 471, 120-B IPC, registered at Police Station Gharinda, District Amritsar Rural.

2. Learned senior counsel for the petitioners *inter alia* contended that petitioners are innocent and have been falsely implicated in the present case. He further submitted that present civil dispute has arisen amongst partners of different firms which has been given the criminal colour. He further submitted that present FIR is an

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afterthought, which has been registered after a delay of six years and seven months from the date of occurrence alleged to have been committed on 01.07.2016. He further submitted that only allegation against the petitioners is with regard to usurping the share of one of the partners namely, Inderpal Singh Sandhu by modifying Association of persons and such share subsequently alleged to have been transferred to Dalbir Kaur in connivance with Surjit Singh (since deceased). He further submitted that in Association of persons dated 01.04.2017, neither complainant nor his father were partners and as such, no question of investing by them arises at all. In the entire allegations, the petitioners have admittedly got nothing and the beneficiary was only Dalbir Kaur, who got the share transferred in her name to the extent of 70% which her husband was as per Association of persons dated 01.04.2017, who died on 25.09.2020 and, therefore, no offence is made out against the petitioners. He further submitted that the allegations on the face of it are of civil nature and in fact the partnership deed (AOP-Annexure P-3) contains the arbitration agreement in Clause-14. He further submitted that till date the complainant has not challenged the sale deed even before the civil Court. He further submitted that complainant has no *locus standi* to file the complaint on the basis of which the FIR has been registered as neither he nor his father was partner in the company. He further submitted that all the allegations are based upon documents and nothing is to be recovered from the petitioners. Therefore, custodial interrogation of the petitioners is not required. He further submitted that allegations are otherwise also

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against Surjit Singh, who has since died and beneficiary is his wife Dalbir Kaur, who has already been granted *ad interim* anticipatory bail by this Court vide order dated 23.02.2023 passed in CRM-M-9774 of 2023. He further submitted that the petitioner No.1 got regular bail in similar FIR No.162/2022, got registered by the same complainant in the same Police Station and lastly on 31.01.2023 he was granted bail and immediately thereafter the present FIR has been registered on 17.02.2023 on similar facts. He further submitted that the allegations in the present case are required to be examined in the light of allegations levelled in FIR No.104 dated 07.05.2021 registered under Section 420 IPC (Sections 465, 467, 471, 120-B IPC added subsequently) as reference of “Fair Property Creative Builders” has already been given in the said FIR. He further submitted that the complainant is habitual of filing complaints against the petitioners with a sole purpose to harass them as petitioners were booked in three cases bearing FIR No.104 dated 07.05.2021 under Section 420 IPC (Sections 465, 467, 471, 120-B IPC added subsequently); pertaining to M/s C.C. Developers, FIR Nos.162 and 163 dated 08.09.2022 under Section 420 IPC registered at Police Station Gharinda, District Amritsar Rural pertaining to M/s I.K. Traders and M/s Creative Traders respectively at the instance of the complainant. He further submitted that separate FIRs containing similar type of allegations in respect of same cognizable offence are not permissible and he has placed reliance upon the judgment of the Hon’ble Supreme Court in ***Satinder Singh Bhasin v. Government of NCT of Delhi and others, 2019(10) SCC 800; Amitbhai Anilchandra***

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Shah v. CBI and another, 2013(6) SCC 348, which has been followed by the Jharkhand High Court in *Manish Verma and others v. State of Jharkhand (A.B.A. No.9109 of 2021) decided on 25.04.2022* and anticipatory bail was granted; judgment of the Bombay High Court in *Criminal Writ Petition No.1821 of 2022 – Nikhil Shyamrao Bhamara v. State of Maharashtra and another decided on 21.06.2022* and judgments of this Court in *Angrez Singh v. Dalbagh Singh, 1999(2) AICLR 659* and *Veena Rani and another v. State of Punjab, 2021(3) Law Heralds 2540*. He further submitted that apart from aforesaid three FIRs, which have been registered against the petitioners at the instance of the complainant, petitioners are not involved in any other case. No notice under Sections 160 and 41-A of Code of Criminal Procedure, 1973 has been served upon the petitioners, as mandated under the law. He further submitted that a petition bearing CRM-M-10386-2023 has been filed by one Desa Singh and Dalbir Kaur for quashing of FIR No.104 dated 07.05.2021, wherein, a Co-ordinate Bench of this Court has issued notice of motion and now, the same is pending for 27.07.2023. He further submitted that petitioners are ready and willing to join the investigation.

3. On the other hand, learned State counsel, assisted by learned counsel for the complainant has vehemently opposed the prayer seeking anticipatory bail to the petitioners and submitted that petition seeking anticipatory bail by the present petitioners in case FIR No.104 dated 07.05.2021 was dismissed by a Co-ordinate Bench of this Court vide order dated 15.11.2021, passed in CRM-M-35166-2021 and

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against that order, SLP (Crl.) No.2973-2022 filed by the petitioners, their prayer for grant of pre-arrest bail was also declined by the Hon’ble Supreme Court with the rider that if the petitioners surrender and apply for regular bail the same be considered expeditiously on its own merit. He further submitted that the petitioners have concealed the reference of second Association of Persons dated 01.07.2016, therefore, they are not entitled for grant of anticipatory bail in the present case.

4. I have heard learned Senior Counsel for the petitioners as well as learned State counsel and counsel for the complainant and perused the records.

5. In order to understand the present controversy, the relevant facts are given in tabular form as under:-

Sr No.	Date(s)	Event(s)
1.	18.01.2008	Association of Partners ‘M/s Fair Properties’ was formed as per following share: 1. Tejinder Singh – 10% 2. Harpreet Singh – 10% 3. Inder Preet Singh Sandhu – 30% 4. Surjit Singh – 50%
2.	18.01.2008	Association of Persons purchased land measuring 6K 13M for Rs.4.16 Lakh.
3.	10.06.2011	Will was executed by Inderpreet Singh Sandhu in favour of his niece Huma Sandhu.
4.	01.07.2016	Another Association of Persons was formed <i>(Allegation is that 30% share of Inderpreet Singh Sandhu was usurped).</i>
5.	17.02.2017	Inderpreet Singh Sandhu expired.
6.	01.04.2017	Third Association of Persons was formed

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		1. Tejinder Singh – 20% 2. Harpreet Singh – 10% 3. Surjit Singh – 70%
7.	05.06.2017	Tejinder Singh and Harpreet Singh executed power of attorney qua their share in favour of Surjit Singh.
8.	28.08.2017	Sale of the said land was executed by Surjit Singh in favour of his wife Dalbir Kaur. <i>(Allegation is that it was done without consent of Inderpreet Singh Chadha).</i>

6. As per allegations levelled in the FIR, Association of Persons dated 01.04.2017 was changed/modified by the present petitioners in connivance with Dalbir Kaur and Surjit Singh (since deceased) without the consent of complainant after the death of Inder Preet Singh Chadha on 17.02.2017. As per detailed enquiry conducted in the present FIR, it has been alleged that chain of original documents was not shown/presented to legally transfer the property or partnership and fake non-judicial stamp papers were used to grab the property(s) of complainant side. It has come on record that the present FIR was registered against the petitioners in respect of firm M/s Fair Properties on the basis of detailed enquiry conducted by Deputy Superintendent of Police, Special Crime, who has been involved in three other FIRs i.e. 1) FIR No. 104 dated 07.05.2021 (pertaining to M/s CC Developers); 2) FIR No. 162 dated 08.09.2022 (pertaining to M/s IK Traders) and 3) FIR No.163 dated 08.09.2022 (pertaining to M/s Creative Traders).

7. The office of firm M/s Fair Properties was situated at the address which is in the ownership of the complainant. Land measuring 6K-13M was sold to M/s Fair Properties on 18.01.2008 by Pardeep

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Kumar, Jaswant Kumar, Raj Kumar and Swinderpal for an amount of Rs.4.16 lakhs by dealing with Inder Preet Singh Sandhu and the sale consideration was paid by him. Besides that, 6K-4M was sold to M/s Creative Buildings, Saraha Nagar, Ludhiana, which was also related to Inder Preet Singh Sandhu. Another land measuring 7K-14M was sold to M/s I.K. Traders which also belongs to Inder Preet Singh Sandhu. The original sale deed dated 18.01.2008 shows that 6K 13M was purchased by Inder Preet Singh Sandhu who had 30% share in the firm M/s Fair Properties. Thereafter, Inder Preet Singh Sandhu had executed a registered Will dated 01.06.2011 in favour of his niece Huma Sandhu, who subsequently vide power of attorney dated 29.07.2019, had transferred the land in the name of complainant Prabhpreet Singh Chadha. The present petitioners, in connivance with Surjit Singh, have made a new Association of Persons dated 01.04.2017 (Annexure P-3) and the relevant portion thereof, is reproduced as under:-

*“This Deed of Agreement made this 1st day of April 2017 to form an Association of Persons under the name & style of **M/s FAIR PROPERTIES** and to witness the terms and conditions of that Association formed between the following persons:*

- 1. S. Harpreet Singh S/o S. Balwant Singh, R/o D-3/1519, Gali No.13, Ram Nagar Colony, Islamabad, Amritsar.*
- 2. S. Surjit Singh S/o S. Harbax Singh, R/o H.No.2216/5, Gali Masit Wali, Chowk Manna Singh, Amritsar.*
- 3. S. Tajinder Singh S/o Harbhajan Singh, R/o H.No.L12/212, Guru Nanak Nagar, Sultanwind Road, Amritsar.*

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*Whereas the parties have been carrying on the business of real estate i.e. purchase, sale and trading of land, plots, buildings, farm houses, godowns, residential properties and developing of colonies and commercial complexes/markets etc. as Association of Person under the name & style of M/s Fair Properties vide earlier **deed dated 01.07.2016.***”

8. A perusal of the record shows that in entire petition, there is no mention of Association of Persons dated 01.07.2016 by the petitioners. It has been simply stated that in Association of Persons dated 01.04.2017, which was made after the death of Inder Preet Singh Sandhu on 17.02.2017, Inder Preet Singh Sandhu had taken voluntary retirement. Nothing has been placed on record with regard to his share as per Association of Persons dated 18.01.2008. The above fact also substantiates the allegation levelled against them for usage of non-judicial stamp papers duly come in investigation process. No document of voluntary retirement/leaving the business by Inderpreet Singh Sandhu in support of their contentions by the petitioners has been placed on record. Rather, they have concealed the Association of Persons dated 01.07.2016. Thereafter, present petitioners, vide power of attorney dated 05.06.2017, had given their shares in favour of Surjit Singh, who has executed sale deed dated 28.08.2017 in favour of Dalbir Kaur without consent of complainant in respect of land purchased by his father in favour of M/s Fair Properties. An FIR No.01 dated 03.01.2018, under Section 306, 120-B, 384, 506 IPC, PS Airport, Amritsar, was registered against Surjit Singh with regard to suicide committed by Inder Preet Singh Chadha, who in his suicide note has

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specifically written the cheating and fraud committed by Surjit Singh in connivance with co-accused, which is pending trial before learned Additional Sessions Judge, Amritsar.

9. It would be apt to mention here that Association of Persons dated 01.04.2017 was created to facilitate the transfer of the land in favour of Dalbir Kaur and to deliberately suppressed by the accused persons inasmuch as they have forged the signatures of late Inderpal Singh Sandhu on the aforesaid document so as to usurp the shareholding in favour of Inderpreet Singh Sandhu. As per record, the Association of Persons dated 01.07.2016 has not seen the light of the day. Inder Preet Singh Chadha died on 17.02.2017 and therefore, the earlier AOP dated 01.07.2016 must be relevant since the same has not been produced by the petitioners.

10. The non-production of Association of Persons dated 01.07.2016 leads to an adverse inference against the petitioners by virtue of operation of Section 114 of Evidence Act, which is reproduced as under:-

“The Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.”

11. It is apt to note here that in FIR No.104 dated 07.05.2021, where the similar set of allegations were made, the present petitioners invoked the jurisdiction of this Court under Section 438 CR.P.C. but the same was dismissed vide order dated 15.11.2021 passed in CRM-M-35166-2021. The said order was also challenged before the

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Hon'ble Supreme Court vide SLP (Crl.) No.2973-2022 which was dismissed on 11.04.2022 by passing the following order:-

“We have heard learned senior counsel for grant of pre-arrest bail prayed for which has been declined by the High Court under the order impugned.

After hearing learned counsel for the parties and going through the record, we are not inclined to grant indulgence of pre-arrest bail prayed for. Accordingly, the Special Leave Petition is rejected. However, if the petitioner(s) surrender and apply for regular bail, the same be considered expeditiously on its own merit in accordance with law.

Pending application(s), if any, shall stand disposed of.”

12. So far as the judgments relied upon by the counsel for the petitioners are concerned, the same will be of no help to the petitioners as facts/issue involved/relief claimed in those cases are entirely different from the facts of the present case.

13. The interim anticipatory bail granted to Dalbir Kaur vide order dated 23.02.2023 passed by this Court in CRM-M-9774-2023 is concerned, she was only the beneficiary of the property transferred in her name by her late husband and she was not the partner in any Association of Persons nor signatory to any of the exchange/transfer deeds.

14. Reliance can be placed on the judgments of the Hon'ble Supreme Court in ***Prem Shankar Prasad v. The State of Bihar and another, 2021(4) RCR (Crl.) 598*** and ***Anil Kumar Singh v. High Court of Judicature at Patna through its Registrar General and another, (2020)19 Supreme Court Cases 364***, wherein the Hon'ble

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Supreme Court, keeping in view nature of allegations and conduct of the petitioner, was not inclined to invoke its jurisdiction while dealing with the pre-arrest bail matters.

15 Keeping in view the peculiar facts and circumstances of the case as well as settled proposition of law, coupled with the detailed discussion made herein above, this is not a fit case for interference as the same lacks merit. Accordingly, the present petition seeking anticipatory bail is dismissed.

16. It is made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

02.06.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No