

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

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CRM-M-19902-2023 (O&M)
Date of decision: 12.05.2023

Surinder Singh

....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Harsh Chopra, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG, Punjab

Mr. Aditya Sharma, Advocate for the complainant

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in FIR No.34 dated 04.04.2023, registered under Section 420 of the Indian Penal Code, 1860 at Police Station Sadar Rupnagar, District Rupnagar.

2. Learned counsel submits that the petitioner had taken Rs.6 lakhs from one Kamaljit Singh on finance basis. However, he got executed power of attorney in his favour and based on which fraudulently sold the land of the petitioner to one Rakesh Kumar vide sale deed dated 27.06.2022. Immediately, upon coming to know of the fraud having been committed upon him, the petitioner filed

representations to the police on 12.07.2022 as well as to the Tehsildar and the SSP on 07.07.2022 followed by another representation dated 13.08.2022, Annexured P-5. The petitioner also challenged the same by way of filing a civil suit which is pending. He further submits that he had no intention to cheat the complainant by executing an agreement to sell on 12.11.2021. He further submits that the petitioner is ready and willing to join investigation as and when required by the investigating agency.

3. Learned State counsel assisted by learned counsel for the complainant, however, on the other hand submits that the petitioner had intention to cheat the complainant from the very inception as there is an agreement to sell dated 09.08.2021 that was executed by the petitioner in favour of Kamaljeet Singh whereafter a power of attorney dated 12.08.2021 had also been duly executed by him on which not only are his signatures but even his photographs were taken in the office of Sub Registrar where it was duly registered. Despite the above, the petitioner entered into an agreement to sell with the complainant on 12.11.2021 regarding the same piece of land and accepted the earnest money, however, did not execute the sale deed, though an extension of the date for it was got extended but instead fraudulently got sold the very said land through Kamaljit Singh to another person. The agreement to sell and power of attorney were of a date prior to the date of agreement to sell that had taken place with the complainant. The police complaints and civil suit filed by the petitioner are merely to create defence and further defeat the rights of the complainant by complicating the matter. The custodial interrogation of the petitioner is extremely necessary to unearth the truth in the matter, thus, he be not granted the concession of anticipatory bail.

4. Heard.

5. 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, 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.”

6. In the case at hand, the allegations are grave in nature as detailed in the FIR. The petitioner is stated to have taken Rs.6 lakhs from one Kamaljit Singh on finance basis and an agreement to sell dated 09.08.2021, is said to have been entered into in favour of Kamaljit Singh regarding the land, whereafter a power of attorney dated 12.08.2021 had also been duly executed and registered before the Sub Registrar, wherein he was photographed. Despite the above, the petitioner is stated to have fraudulently entered into an agreement to sell with the complainant also on 12.11.2021, regarding the same piece of land and accepted the earnest money, however, did not execute the sale deed. The land is stated to have been got sold through Kamaljit Singh to another person which as alleged shows the intention to defraud from the very inception.

7. In **P. Chidambaram vs. Directorate of Enforcement** (2019) 9 SCC 24, 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 CrPC 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.”

8. 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.

9. Keeping in view the facts and circumstances of the case, this Court is thus not inclined to grant the concession of anticipatory bail to the petitioner.

10. Petition stands dismissed.

11. 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

May 12, 2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No