

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(102+202)

2023:PHHC:081055
CRM-M-20213-2023(O&M)
Date of Decision: 31.05.2023

Tarsem Singh & another

--Petitioners

Versus

State of Punjab & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. A.P.S. Rehan, Advocate for the petitioners.

Mr. Karunesh Kaushal, AAG, Punjab.

Mr. J.S. Ghuman, Advocate for respondent no.2.

RAJESH BHARDWAJ.J (Oral)

CRM-25223-2023

Application is allowed as prayed for.

Annexures R-2/1 to Annexure R-2/7 are taken on record.

Main Case

The present petition has been filed under Section 438 Cr.P.C seeking the benefit of anticipatory bail to the petitioners in case FIR No.2 dated 31.3.2023 under sections 406, 427, 447, 448 and 120-B I.P.C, registered at Police Station, NRI, District Gurdaspur.

As per factual matrix, the FIR in question was registered on the complaint of Gurinder Singh Maan, wherein it was alleged that he was an N.R.I and living in U.S.A. His father Mohinder Singh Maan constructed his house at village Bhakhewal and electric as well as tube well connections were also installed by him. His father expired in the year 1987 leaving him and his two sisters namely Surinder Kaur and Jitender Kaur as legal heirs.

In the year 2006 Tarsem Singh and Narinder Kaur i.e. the present

petitioners approached him to allow them to live in one of the portion of their house and he was assured that the same would be vacated by them as and when he desired. Complainant permitted the petitioners to live in one of the portion of the house and remaining portion was locked. In the month of March, 2022 complainant through his Attorney Bhupinder Singh Maan revoked and cancelled the license of Tarsem Singh regarding the above said portion of the house and they were requested to vacate the house. However, when his Attorney went to take possession, he found the locks broken and the items found to have been missing. It was alleged that complainant could not visit India due to Covid-19 and hence sent his Power of Attorney Bhupinder Singh Maan. He alleged that after 13.4.2022 Tarsem Singh and his family did not allow his Attorney to enter his house. A request was made to take legal action against the culprits.

After registration of the FIR, investigation commenced. Apprehending the arrest, petitioners approached the court of learned Sessions Judge, Gurdaspur for grant of bail, however, after hearing the parties, the same was declined vide order dated 18.4.2023. Aggrieved by the same petitioners have approached this court for grant of bail.

Learned counsel for the petitioners vehemently contends that the petitioners have been falsely implicated in this case. It is submitted that allegations pertaining to the breaking of locks and removing the items from their house are totally false and frivolous. Counsel submits that factually the petitioners were in possession of the property with permission granted by the complainant himself. It is submitted that in the year 1991 the petitioners had already entered into agreement for the purchase of the property in question and the earnest money of Rs.5 lakh had also been paid

to the sister of the complainant. It is submitted that petitioners entered into agreement dated 21.7.2000 with Jatinder Kaur i.e. sister of the complainant and Rs.5 lakh was paid. It is further submitted that Jatinder Kaur was the General Power of Attorney holder of the complainant and thus she was authorized to enter into agreement to sell with the petitioners. Counsel submits that petitioners have already filed a suit for permanent injunction regarding the property in question against Sh. Bhupinder Singh Maan which is pending adjudication. It is submitted that though the earnest money had been paid but the complainant did not execute the sale deed and hence the petitioners were not at fault. Counsel submits that in the facts and circumstances of the case, possession of the petitioners over the property is permissible and hence allegations levelled against the petitioners neither constitute any prima facie case against them nor make out any case for their custodial interrogation. He submits that in the overall facts and circumstances of the case petitioners deserve to be granted bail.

Learned counsel for the complainant has vehemently opposed the submissions made by counsel for petitioners. He submits that complainant is an N.R.I and in good faith the petitioners were granted permission to live in one portion of the property with the condition that it would be vacated as and when the complainant required. He submits that in the absence of the complainant petitioners became dishonest and forged and fabricated various documents in order to usurp the parental property of the complainant. He submits that the agreement to sell and the General Power of Attorney alleged by the petitioners are totally forged and fabricated and thus cannot be relied upon. It is submitted that there is no sale deed executed by the complainant in favour of the petitioners and thus they have

no title regarding the ownership of the property.

Learned State counsel on instructions has submitted that a perusal of the agreement to sell, as relied upon by the petitioners, would show that the same is a forged and fabricated document. He submits that the same contains no.2677, whereas the agreement to sell relied upon by the petitioners also has the same number which shows that agreement has been prepared by the petitioners by forgery in order to usurp the property of the complainant. It is submitted that case is under investigation and there is a strong prima facie case made out against the petitioners and their custodial interrogation would be required.

I have heard learned counsel for the parties at length and have gone through the record of the case carefully.

From the perusal of the record it is apparent that there is no legal document regarding the payment of the earnest money as contended by counsel for the petitioners. Further there is no sale deed executed and hence the ownership of the complainant is not disputed. Investigation in this case is under progress and at the threshold.

Hon'ble the Supreme Court in ***State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187*** has held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often

interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in **Gurbaksh Singh Sibbia Vs.**

State of Punjab, AIR 1980 SC 1632 has held as under:-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while

*deciding an application for anticipatory bail. The relevance of these considerations was pointed out in **State v. Captain Jagjit Singh (1962) 3 SCR 622**, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.*

In the above said case, the Hon'ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual.

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances. Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in his favour.

Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

31.05.2023

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No