

CRM-M-29808-2022 (O&M) and
CRM-M-35445-2022 (O&M)

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2023:PHHC:111998

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 23.08.2023

(I) CRM-M-29808-2022 (O&M)

PARAMJIT KAUR

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

(II) CRM-M-35445-2022 (O&M)

TEJINDERPAL SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. P. S. Ahluwalia, Advocate and
Ms. Bhavi Kapur, Advocate
for the petitioner(s).

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

Mr. K. L. Saini, Advocate
for the complainant.

JASGURPREET SINGH PURI, J. (Oral)

1. Both these petitions are taken up together for final disposal with
the consent of learned counsel for the parties since both these petitions arise out

of the same FIR and the prayer in both these writ petitions is for grant of anticipatory bail.

2. The present petitions have been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioners in FIR No.110 dated 17.06.2022, under Sections 420 and 120-B of the IPC, registered at Police Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib, Punjab.

3. The petitioner, namely, Paramjit Kaur in CRM-M-29808-2022 is the wife of the Tejinderpal Singh, who is petitioner in CRM-M-35445-2022. The allegations in the present FIR were pertaining to non-giving of share to the complainant in the family property by getting the wrong mutation done.

4. Learned counsel for the petitioners in both the cases has submitted that a civil suit was filed by the complainant and his brother pertaining to the same subject matter which is the subject matter of the present FIR and after filing of the said civil suit, he did not even appear before the Court for large number of dates and ultimately his suit pertaining to the same subject matter has been dismissed. He further submitted that the arrest of Paramjit Kaur (petitioner in CRM-M-29808-2022) and Tejinderpal Singh (petitioner in CRM-M-35445-2022) was stayed by this Court on 27.07.2022 and 22.08.2022 respectively and it is almost one year thereafter that the concerned Investigating Officer did not even call the petitioners for joining the investigation since the matter was only civil in nature and civil litigation was also going on between the parties at that point of time. He further submitted that in this way, the

custodial interrogation of the petitioners is not required especially in view of the fact that now the civil suit itself has been dismissed.

5. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab, on instructions from ASI Lakhvir Singh submitted that since the arrest of the petitioners was stayed and there was no specific direction issued by this Court regarding joining the investigation, the petitioners were not called for joining the investigation process.

6. I have heard the learned counsel for the parties.

7. The allegations in the present case pertain to non-giving of share to the complainant due to wrong mutation. However, as per the learned counsel for the petitioners, the civil suit filed by the complainant and his brother qua same subject matter as in the present case has been dismissed on 13.07.2023. During the course of arguments, learned counsel for the petitioners also supplied the copy of the judgment, whereby the civil suit filed by the complainant and his brother has been dismissed and the same is taken on record. The copy of the same has also been supplied to learned State counsel as well as learned counsel for the complainant during the course of proceedings. The arrest of Paramjit Kaur (petitioner in CRM-M-29808-2022) and Tejinderpal Singh (petitioner in CRM-M-35445-2022) was stayed by this Court on 27.07.2022 and 22.08.2022 respectively, which is almost one year ago.

8. The plea which learned State counsel has taken today is that although there was stay of arrest of both the petitioners but there was no such specific direction with regard to joining of the petitioners in the investigation process and therefore they were not called for joining the investigation.

9. This Court in CRM-M-19439-2020 had taken serious view with regard to the stand which normally the Investigating Officers take that in case the arrest of the accused is stayed, then in the absence of any specific directions, joining of the accused in the investigation process cannot be made. The Assistant Inspector General of Police, Punjab had already filed an affidavit alongwith circular dated 30.12.2021 issued by the Director General of Police, Punjab in the aforesaid case, vide which it was made clear by the Director General of Police, Punjab that from henceforth, such kind of stand will not be taken by the State since it is the duty of the police to join the accused in the investigation process when the arrest is stayed by the Court. Therefore, such a stand which is now being taken by the learned State counsel is contrary to the directions issued by the Director General of Police, Punjab in CRM-M-19439-2020. The relevant portion of the aforesaid circular issued by the Director General of Police, Punjab is reproduced as under:-

“3. In no case, such a stand shall be taken by any Investigating Officer before Hon'ble Courts that accused was not joined in investigation for want of specific orders to that effect. It is the duty of the Investigating Officer to summon or join the accused in investigation of the case in cases where arrest is stayed or any other interim protection is granted by the Hon'ble Court. The stand to the contrary has the effect to halt the process of administration of justice, which cannot be justified at any cost.

4. In view of above, it is hereby directed that all the Commissioners of Police, Senior Superintendents of Police and other heads of offices of Punjab Police shall ensure that the above position of law is brought to the notice of all GOs,

SHOs and Investigating Officers in their respective jurisdiction. Any default shall be viewed seriously and may entail regular departmental/disciplinary proceedings against the delinquent officers/officials.”

10. Be that as it may, during the course of arguments, learned counsel for the petitioners has undertaken on behalf of the petitioners that in future in case the petitioners are required for joining the investigation by the police then they undertake to join the investigation and they will cooperate fully with the investigation process.

11. In view of the aforesaid position, both the petitions are allowed. It is directed that in case in future the petitioners are required to join the investigation process then they shall join the investigation and cooperate fully with the investigation process and comply with the conditions envisaged under Section 438(2) Cr.P.C.

23.08.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No