IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29796-2023
Reserved on: 24.11.2023
Pronounced on: 06.12.2023

Harjit Kaur ...Petitioner

Versus

State of Punjab …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Sapna Seth, Advocate for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

****

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
10	28.03.2023	Vigilance Bureau, Amritsar	420, 467, 468, 471, 120-B IPC and Section 7 of Prevention of Corruption Act 1988

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. Vide order dated 06.06.2023, petitioner was granted interim bail which is continuing till date.

3. The general contention of the petitioner is that she is an old lady, with medical ailments, and a family to look after and that the custodial investigation is neither required nor would serve any purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

3. The state's counsel opposes the bail and states that considering the allegations, the petitioner's custodial interrogation is necessary.

4. The facts of the case are being taken from para Nos.3 & 4 of the reply dated 02.11.2023 filed by the concerned DySP, which reads as under:-

> *"3. That the brief and the relevant facts of the case are that aforesaid FIR No. 10 dated 28.03.2023 was registered against the petitioner and co-accused Amarjit Singh, Naib Tehsildar, Balwinderjit Singh, Patwari and Jaspal Singh, Numbardar as per the direction of the Senior Superintendent*

of Police, Vigilance Bureau, Range Amritsar pursuant to the approval given by the office of the Chief Director, Vigilance Bureau, Punjab vide letter No. 12077/VB-S-8 dated 14.03.2023 after obtaining a prior sanction under section 17-A of the Prevention of Corruption Act, 1988 from the competent authority i.e., Additional Chief Secretary cum Financial Commissioner (Revenue), Govt. of Punjab, vide Memo No. 04/37/2016-M.A.1 (6) now M.A 3 (3)/2017/Chandigarh dated 23.01.2023, after the submission of the detailed Supplementary report dated 01.01.2019 relating to the Vigilance Inquiry No. 18/2016-Amritsar by the then Deputy Superintendent of Police, Vigilance Bureau, Range Amritsar after verifying the allegations made by Rashpal Singh son of Surjit Singh resident of VPO Neshta, Tehsil and District Amritsar, in his complaint addressed to the Senior Superintendent of Police, Vigilance Bureau, Range Amritsar alleging therein that the petitioner has illegally and fraudulently got transferred the ownership of land under his possession on the basis of inheritance of his father, in the revenue record by preparing forged sale deeds from Nand Lal son of Mallu Ram and Tek Kaur widow of Ram Chand, Karam Chand son of Mulakh Raj and Pritam Dass son of Mulakh Raj and Goma daughter of Prabhu, in her favour in connivance of the officials/ employee of the revenue department. He further alleged the petitioner has also got sanctioned mutation Nos. 2922 and 2933 in her favour on the basis of the aforesaid fictitious sale deeds with the connivance of the revenue officers of the Tehsil Attari, District Amritsar.

4. That after the verification of the allegations made in the aforesaid complaint during the course of the Vigilance Enquiry No. 18 dated 05.08.2016-Amritsar, it has been found on the basis of the oral and documentary evidence that the petitioner obtained the details of the khasra numbers of the land measuring 67 kanals 17½ marlas under the possession of aforesaid Rashpal Singh and its owners from the co-accused Balwinderjit Singh, Circle Patwari and thereafter, certified copies of two sale deeds dated 20.06.2008 relating to the aforesaid land were prepared by the petitioner in connivance with the co-accused Amarjit Singh, Naib Tehsildar, which were attested and signed him (co-accused Amarjit Singh, Naib Tehsildar) as certifying authority and then, the co-accused Balwinderjit Singh, Patwari recorded the mutations Nos. 2922 and 2923 in the revenue record on the basis of the aforesaid forged certified copies of the sale deeds, which were sanctioned by the co- accused Amarjit Singh, Naib Tehsildar in favour of the petitioner. The co-accused Jaspal Singh, Numbardar attested the documents as witness for the sanction of the aforesaid mutations. During the enquiry, no record relating to the execution of the alleged sale deeds was found and no evidence relating to the filing of any application for obtaining certified copies by the petitioner and receipts relating to the payment of copying charges was found in the record. No deed writer with the name of Mohinder Pal Singh as mentioned in the certified copies of the sale deed as a scribe of the documents was found working the concerned area. As per the record, the sale deed registered vide documents No. 289 dated 20.06.2008 in the office of the Joint Sub-registrar, Attari, District Amritsar was found in the name of Smt. Bindu Bhalla wife of Subhash Chander resident of Mohalla Kacha Killa, VPO Attari, District Amritsar and mutation No. 4351 was found sanctioned in her name on the basis of the aforesaid sale deed. There is no record relating to the registration of the sale deed dated 20.06.2008 vide document No. 295 dated 20.06.2008 in the office of the joint Sub-registrar, Attari, District Amritsar, or the payment of the registration fee for the registration of the both the aforesaid sale deeds *dated 20.06.2008 in the name of the petitioner. It was concluded by the then Deputy Superintendent of Police, Vigilance Bureau, Rage Amritsar in his aforesaid enquiry report that the co- accused Amarjit Singh, Naib Tehsildar, Balwinderjit Singh, Patwari and Jaspal Singh, Numbardar misused their official powers being Public servants in connivance and conspiracy with the petitioner to fraudulently transfer the ownership of the land possessed by Rashpal Singh son of Surjit Singh resident of village Neshta, Tehsil and District Amritsar, in her name and recommended for the registration of the FIR and investigation of the case against them after taking legal opinion.*

5. It would be appropriate to extract the fundamental submissions made in para Nos.6 to 8 of the petition, on which the petitioner seeks bail, which reads as follows:-

"6. That the petitioner is owner of the property but never in possession of the property in question since 2008 and the tenants at willunlawfully using and enjoying the land in possession since the ownership of the petitioner. That Nand Lal son of Mallu Ram, Tej Kaur widow of Ram Chand, Karam Chand, Pritam Dass and Smt. Goma had executed sale deed dated 20.06.2008 in favour of petitioner Harjit Kaur through Kakka Singh who was the father of the petitioner and all such affairs were dealt by him being head of family. Hence, the FIR has been got registered with the oblique motive to harass and humiliate the petitioner as a pressure tactic.

7. That it is pertinent to mention here that the father of the petitioner has purchased the property in dispute on her name in the year 2008. The father of the petitioner paid consideration amount to the owners of the property. The petitioner obtained the certified copy of the sale deed from the office of Joint Sub registrar, Attari. It is also important to mention here that record regarding the registries of Mutation numbers 2922 & 2923 was destroyed due to fire in the department and DDR and FIR relating to the incident was also lodged in the Police Station in 2012. It is also recorded in the order dated 05.09.2016 passed by the Ld. Court of Sh. Rajesh Sharma, PCS, Sub Divisional Magistrate, Amritsar. A copy of order dated 05.09.2016 is annexed herewith as Annexure P-3 for the kind perusal of this Hon'ble Court.

8. That the father of the petitioner paid proper stamp duty at the time of registry of sale deed and the sale deed was registered by the then Collector after verifying all the documents. At the time of registration, the woman owner Tejkaur and father of the petitioner Kakka Singh was duly present and also have photographs at the stamp duty which is also duly signed by Joint Sub-registrar, Attari dated 20.06.2008 on Friday at 3:30pm in the evening. The witness at the registrar office at the time of registration were present namely witness no. 1 Virsa Singh Numberdaar of village Attari and witness no. 2 Tarseam Singh were also present. The petitioner as is an illiterate lady and the complainant is an unknown person who is alleging falsely the petitioner. It is false that the petitioner has done anything wrong while getting the copy of mutations on her name. The petitioner was not in possession of the proper documents regarding the property purchased by her father on her name. The petitioner met with an agent (as the petitioner is an illiterate lady and having no knowledge of the process), in the year 2015 applied for copy of these registries and got mutations on her name in a legal manner. The complainant is alleging false and frivolous facts in the alleged FIR. The

> *said FIR is just another way to harass the petitioner as earlier also the Civil Suits were filed against the Petitioner."*

6. In addition to above, petitioner's counsel argued that during interim bail, petitioner had fully cooperated with the investigator and custodial interrogation is not required because all the documents have been recovered. She further submitted that fee for purchase of stamp papers, a sum of Rs. 1,93,750/- was handed over to an agent and if the fake papers have been annexed then it is the job of that agent. She further argued it was done by petitioner's father and the petitioner is an illiterate lady and had no idea what was going on.

7. To the contrary, counsel for the State submits that petitioner by adopting an evasive and adamant attitude, has not at all cooperated with the investigator and she did not reveal name of any agent and massive chunk of land has been illegally transferred when original owner had already expired way back on 06.03.1959, whereas the sale deed was registered in 14.10.2015 and even the stamp papers on which the sale deed was registered, were fake and no amount had been deposited in the government treasury.

8. The investigation reveals that petitioner in connivance with Circle Patwari and Naib Tehsildar, forged two sale deeds dated 20.06.2008 and said sale deeds were attested and signed by the Naib Tehsildar as certifying authority and based on that, Patwari Balwinderjit Singh recorded the mutations Nos.2922 & 2923 in the revenue record and after that such mutations were also sanctioned by the said Naib Tehsildar-Amarjit Singh, in favour of petitioner. Jaspal Singh-Nambardar attested documents as witness for the sanction of aforesaid mutations. During the inquiry, no official record was found regarding execution of the sale deeds and there was no evidence for filing of any other application for obtaining certified copies by the petitioner. Further no deed writer in the name of Mohinder Pal Singh, as was mentioned in the certified copies of the sale deeds, was found to be working in the said area. Further documents No. 289 dated 20.06.2008 were actually sale deeds in name of another person and said number was used to prepare forged sale deeds.

9. An analysis of all the pleadings as well as submissions made by counsel for the parties, would lead to the following outcome. "Owner of the land-Nand Lal, had expired on 16.03.1959. He along with co-sharers owned 79 kanals & 2.5 marlas of land. In connivance with Naib Tehsildar Amarjeet Singh, Balwinderjit Singh Patwari and Jaspal Singh Nambardar, petitioner got the said land transferred in her name on 14.10.2015. The investigation reveal that stamp papers, which were produced before deed writer were not issued by the State Bank of India and the amount of Rs.1,93,750/- was also not deposited in the government treasury. Further, no person named as a deed writer, was

actually working in that area.

10. Given above, petitioner's custodial interrogation is required to know the name of deed writer and involvement of other persons and in addition to that an analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

11. In Sumitha Pradeep v Arun Kumar CK, 2022 SCC OnLine SC 1529, Supreme Court holds,

> [16]. … We have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

12. In <u>State of Gujarat v. Mohanlal Jitamalji Porwal</u> (1987) 2 SCC 364, Supreme Court holds,

> [5]. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

13. In <u>State rep. by CBI v. Anil Sharma</u>, (1997) 7 SCC 187, Supreme Court holds,

> [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 favourable 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.

14. In<u>Jai Prakash Singh v. State of Bihar and another</u> (2012) 4 SCC 379, Supreme Court holds,

> [19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

15. In Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, Supreme Court holds,

> [34]. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.
>
> [35]. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

16. In <u>P. Chidambaram v. Directorate of Enforcement</u>, 2019 9 SCC 24, Supreme Court holds,

> [70]. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C., 1973 is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

17. In <u>Central Bureau of Investigation v. Santosh Karnani</u>, Cr.A 1148 of 2023, dated 17-04- 2023, Supreme Court, in an FIR registered under sections under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988, holds,

> [24]. The time–tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.
>
> [31]. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious.

18. In the background of the allegations and the light of the judicial precedents mentioned above in the facts and circumstances peculiar to this case, the petitioner fails to make a case for anticipatory bail.

19. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

<u>Petition dismissed</u>. Interim orders, stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

06.12.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.