

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

108

CRM-M-31672-2023 (O&M)

Date of decision: 13.12.2023

RAJENDER SINGH

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Ishnoor Singh, Advocate for
Mr. Aakash Singla, Advocate
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.412 dated 12.08.2022, under Sections 409, 420, 467, 468, 471, 120-B of IPC, registered at Police Station Civil Line, Sonipat, District Sonipat.

ALLEGATIONS AGAINST THE PETITIONER

2. The petitioner who is a State Government employee and was posted as Patwari. The present petitioner was arrested on 12.02.2023, and is facing trial in the FIR (supra). The prosecution agency was set into motion through a complaint made by SI Sunil Kumar, CM Flying Squad, Haryana, Karnal Division, wherein, he has stated that he received a secret information that land measuring 3000 square yards belonging to custodian, falls within the limits of Municipal Corporation, Sonipat, was illegally sold by dividing the same into 07 parts, and a commercial showroom is

being constructed over the said land. It was further alleged that the officers from the revenue department and Municipal Corporation in connivance with some land grabbers/Mafia in a pre-planned manner have shown the commercial/residential land as an agricultural land in the revenue records and executed the transfer/registered deeds in utter violation of the norms of the Government, for their own undue benefit and to earn extraneous benefits from the same, and have caused huge wrongful loss in crores to the Government/public exchequer.

3. A perusal of the complaint reveals that in the year 2014, when the beneficiaries applied before the Revenue authorities for registration of said land in his favour, the said land was under dispute, and litigation pertaining to the same was also pending before the Hon'ble Punjab and Haryana High Court, and as per the provisions enshrined in Haryana Evacuee Properties (Management and Disposal) Rules, 2011, no disputed property of the custodian can be transferred. However, in the year 2014, at the time of application for transfer, the said land was under dispute and was transferred by Tehsildar (Sales) in the year 2020, only on the basis of valuation of a Patwari, which was prepared by him in connivance with the land grabbers/mafia without adhering to the prescribed norms and rules. The above said land was shown as agricultural in nature, despite the spot inspection, the land in question was transferred for a sum of Rs.2.30 crore. Whereas, prevailing market rate of the said land was about Rs.17.00 crores.

4. In the inquiry, it depicts that the property in question which was transferred by showing as agricultural land, was in fact a commercial property. The report *qua* the nature of the property, and the valuation of the land was also prepared by the petitioner-Patwari. Earlier when the sale deed was executed on the basis of report prepared by the petitioner-Patwari, the land was sold @ of Rs.12,000/- per

square yard, whereas, now the property showing as commercial property has been sold @ Rs.20,000/- per square yard.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

5. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

- (i) The instant case is triable by the Court of Magistrate and the conclusion of trial will take long time;*
- (ii) Petitioner has faced sufficient incarceration as on today;*
- (iii) The Jamabandies for the year 1973-1974 and 2018-2019, attached as Annexures P-22 P-23, in column No.8, which prescribed the area and the nature of the land, recorded as Gair Mumkin and some of the land was recorded as chahi, therefore, the land was in fact in the nature of agriculture land, as recorded in the revenue record.*
- (iv) The market value of the land which was reported by the present petitioner, duly endorsed by the Girdawar and the Tehsildar Sales, who have already been granted the relief of anticipatory bail in CRM-M-58554-2022 and CRM-M-12132-2023.*
- (v) The entire case is based on documentary evidence and most of the witnesses are official witnesses;*
- (vi) The petitioner is in no position to influence the official witnesses;*
- (vi) So far as the change of nature is concerned, the petitioner has placed reliance upon the revenue record to say that whatever is the nature of land prescribed in the revenue record, he reported so. Secondly, with regard to the valuation of the property is concerned, if there is deficiency of the stamp duty then the same can be recovered by initiating appropriate proceedings under the Stamp Act.*

(vii) Co-accused Vikas, Tehsildar (Sales), Om Wati alias Oomi and others, Randhir Singh and another and Balwan Singh (naib Tehsildar) have preferred separate petitions under Section 482 Cr.P.C for quashing of the case i.e. CRM-M Nos.44017, 45926, 45930 and 56576 of 2022 respectively. In the case of Vikas Tehsildar (Sales) the further proceedings beyond the cognizance stage have been stayed, vide interim order dated 22.09.2022 (Annexure P-7) passed in CRM-M-44017-2022. In the cases of Om Wati alias Oomi and Raghubir Singh and another have also been granted similar relief vide interim order dated 12.04.2023 (Annexure P-8) passed in CRM-M Nos.45926 and 45930 of 2022 respectively. In the case of Balwan Singh, similar relief has been granted vide interim order dated 05.12.2022 (Annexure P-9) passed in CRM-M-56576-2022.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

6. Upon notice, a detailed status report has been filed, wherein, the role and the incriminating evidence collected against the present petitioner reads as under:-

“That there are direct and specific allegations and sufficient evidence against the petitioner. He is specifically named in the FIR. It is pertinent to mention here that petitioner was posted as Halqa Patwari, Kalupur, District Sonipat and on 20.05.2020, he made the report that he has visited the spot and has physically inspected the spot and has also perused the record but petitioner Rajinder Singh in his physical verification report did not mention the fact that the said property is situated within the area of Sonipat town near ITI Chowk and that shops, house and industries are located near the said property and the said land is situated on the main road and no agricultural activities are being carried out over the said land since a long and as per Girdawari record of Tehsil, Sonipat no agriculture is being done over the said land since the year 1999 and the report was made on the basis of record/Jamabands by concealing the existing state of affairs at the spot and

report was made with regard to collector rates of agricultural land and report of petitioner Rajender Singh, Halqa Patwari was considered to be correct by Suresh Kumar Kanungo after visiting the spot and Tehsildar (Sale) and Naib Tehsildar namely Sushila have also considered the said reports of Patwari (Rajinder Singh) and Girdawar (Suresh) to be correct and even Commissioner (Sale), Sonipat also accorded the approval in this regard and none of them had recorded objection regarding the said report of Rajender Singh Patwari. In the report of petitioner Rajender Singh Patwari shown the said property to be agricultural property having Collector rate at the rate of Rs.1.60 crore per acre. However, this report made by petitioner was factually incorrect, as from the documents collected during investigation, statements of witnesses and other relevant record collected during preliminary enquiry by deponent and enquiry by complainant SI Sunil Kumar, CM Flying Squad, it was found that the then Patwari namely Rajender had visited the spot, but while concealing the material facts, he had shown the said property to be agricultural land, despite the fact that the said land was situated within municipal limits of Sonipat, no agricultural activities were being carried out over the said land for the last 20-25 years, the property is situated on the main ITI Chowk having front on the main road, it was commercial vacant plot as per record of Municipal Corporation. Sonipat and on the basis of said report of petitioner, the property in question was ordered to be sold at the rates of agricultural land. However thereafter, the said property was sold as residential and commercial property. All the above mentioned illegalities were committed by petitioner and co-accused with dishonest intention for their own undue benefit and even the report dated 20.05.2020 of petitioner/accused Patwari Rajender Singh has been tampered with subsequently by adding two more lines. The above mentioned illegality committed by accused persons has led to huge loss to the State Government and loss of public funds. The said property was transferred in the name of purchasers namely Ram Chander. Maman. Satbir, Randhir and Omi in connivance of all the above named persons and after just one month, ten sale deeds showing the property as residential property and then in March, 2022, two sale deeds as commercial properties were executed and by way of above illegality, accused had gained huge benefits. Allegations against petitioner are serious in nature and petitioner had actively participated in the commission of above mentioned offence. Charges against petitioner/accused Rajender Singh

are yet to be framed and all the prosecution witnesses are yet to be examined in the present case and if granted bail, petitioner can tamper with the prosecution evidence by influencing the witnesses and can also hamper the trial by absconding from the process of law and as such, merely on the basis of longevity of incarceration, petitioner is not entitled to the relief of bail as a matter of right. As such, in view of the seriousness of offence, facts of the present case and role of petitioner in committing the offence, petitioner is not entitled to the relief of bail and present petition is liable to be dismissed.

7. This Court during the course of arguments, specifically puts a query to the learned State counsel, that whether any proceedings under the Stamp Act for evading stamp duty has been initiated against the beneficiary or not?

8. Learned State counsel, on instructions, submits that no such proceedings have been initiated so far. The only allegation against the present petitioner, according to the above is that the petitioner has firstly changed the nature of the land, as agriculture, instead of land being commercial and secondly, he under-valued the market price of the property, to give benefit to the private individuals.

ANALYSIS

9. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled ***“State of Rajasthan V. Balchand alias Baliay”, 1977 AIR 2447, 1978 SCR (1) 535***. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

10. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into

consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

11. In “**Nikesh Tarachand Shah V. Union of India**”, (2018) 11 SCC 1, the Hon’ble Supreme Court has recorded the following:-

“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the ‘Meerut Conspiracy cases’ observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt

to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)*

“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”

29. *In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)*

“There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. *In AMERICAN JURISPRUDENCE (2d, Volume 8, p. 806, para 39), it is stated:*

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

12. Also, in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual’s liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

13. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

14. The reason for forming the above inference emanates from the factum

that:- (i) Accused Vikas, Tehsildar in CRM-M-12132-2023 and Suresh Girdawar in CRM-M-58554-2022, have been granted the concession of anticipatory bail, vide order dated 04.09.2023; (ii) After completion of investigation, report under Section 173 Cr.P.C was submitted against petitioner/accused Rajender on 10.05.2023, and now the case is pending in the Court of learned JMIC, Sonipat for 21.12.2023, for supplying copy of challan to petitioner-accused Rajender Singh; (iii) Charges against the petitioner are yet to be framed and all the 13 witnesses as cited by the prosecution agency are yet to be examined; (iv) no fruitful purpose would be served by keeping the petitioner behind the bars; (v) trial is not likely to conclude anytime soon.

FINAL ORDER

15. Considering the hereinabove made discussion, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

16. However, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

17. All pending application(s) stand disposed of accordingly.

13.12.2023
amandeep

(KULDEEP TIWARI)
JUDGE

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