

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

206

CRM-M-29534 of 2019

Date of Decision:24.07.2023

Sombir

....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. Arnav Ghai, Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana

Mr. H. S. Randhawa, Advocate,
for the complainant.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No.546 dated 04.06.2019, under Sections 420 and 120-B IPC, registered at Police Station Sadar Gurugram, District Gurugram.
2. Learned senior counsel appearing on behalf of the petitioner submitted that the petitioner has already joined the investigation and he has also fully cooperated with the investigation process and not once but number of times and therefore the order by which he was directed to join investigation dated 15.07.2019 which is more than four years ago, may be made absolute.
3. The present FIR was lodged on the basis of a complaint made by the

complainant, Indrawati, wife of Jagjit Singh by alleging that the complainant had good terms with the present petitioner Sombir because they were earlier neighbours in the village and thereafter due to the cordial relationship with each other their families always helped each other socially and economically. They were also having many transactions between them from the year 2013 to 2016. On 16.04.2015 there was an open auction by HUDA department for 12 DSS Sector-47. The petitioner stated to the complainant that the shop will be taken up together in the open auction and as per the terms and conditions of the auction, 25% of the total amount has to be deposited within a period of two months. The complainant alleged that she handed over a demand draft amounting to Rs.39,76,000/- to the petitioner issued from her SBI account in favour of DSS G Sector-47 and the remaining payment of Rs.19,87,299/- was taken by the petitioner from her by way of cash by saying that he will prepare the demand draft from his account. In this way the complainant alleged that she had paid a total amount of Rs.59,63,299/- to the petitioner which was half of the amount relating to her share amount. Thereafter, after passage of time they also had some purchaser with them for further sale of the shop but the petitioner refused to sell the shop by stating that he is the sole owner of the shop. It was further alleged in the FIR that there was also a cash transaction of Rs.2.5 crores out of which the petitioner has returned Rs.35 lacs but refused to pay the remaining amount and thereafter threats were also made. The allegations therefore in the complaint which led to the lodging of the FIR was that the petitioner has committed a fraud by taking Rs.59,63,299/- but the shop remains in the name of the petitioner only and apart from the above, an allegation of giving of Rs.2 crores in good faith by the complainant to the petitioner has also

been alleged.

4. The learned senior counsel has argued that undisputedly the present allegations are pertaining to the year 2015 and the present FIR was lodged in the year 2019 after a gap of four years under Section 420 and 120-B IPC and later on the provisions of Sections 467, 468 and 471 IPC were added during the course of investigation. He submitted that there was no justification for delay of four years and apart from the above, so far as the document Annexure P-5 which has been attached by the petitioner alongwith the present petition is concerned, the same was obtained by the petitioner through RTI from the HUDA itself regarding which the same has been so averred in paragraph 5 of the present petition as well. During the course of argument, learned senior counsel for the petitioner has supplied to this Court the aforesaid Annexure P-5 in which the Estate Officer-II, HSVP, Sector-34, Gurugram has attested the same and submitted that this document which is Annexure P-5 has been supplied by the Estate Officer himself through RTI and has attested the same document and therefore the allegations of forgery were unfounded. He further submitted that even otherwise also the complainant has made an allegation that she has given an amount of Rs. 2.5 crores by way of cash to the petitioner for which she has not been able to justify that as to from where she had brought the aforesaid amount of Rs.2.5 crores in cash and therefore the entire allegations against the petitioner are concocted. He further submitted that be that as it may now the petitioner has already joined the investigation and that also about four years ago. The petitioner deserves the concession of anticipatory bail and has prayed that the order dated 15.07.2019 may be made absolute.

5. On the other hand, Mr. Naveen Kumar Sheoran, learned DAG,

Haryana has submitted that during the course of investigation, it was also found that the allotment letter dated 26.04.2015 as attached by the petitioner vide Annexure P-5 in the form of photocopy was a fabricated document and in fact as per the original record as possessed by the HUDA, the allotment was made in the name of three persons i.e. the petitioner, his wife and the complainant. He further submitted that although initially the FIR was registered under Sections 420 and 120-B IPC on the ground of *inter se* dispute between the parties but thereafter during the course of investigation, it was found that Annexure P-5 attached by the petitioner was not in consonance with the original record of the HUDA department where by on the same date and by the same number that was issued to three persons and not to the petitioner alone whereas as per Annexure P-5, it can be seen that it has been issued to the petitioner only and therefore the provisions of Sections 467, 468 and 471 IPC were added later on. He also submitted on instructions that it is correct that the petitioner has joined investigation but learned State counsel has opposed the grant of anticipatory bail to the petitioner on the ground that he has not cooperated with the investigation process because he has not supplied the original copy of Annexure P-5 to the investigating agency nor the receipt was supplied by him, therefore the petitioner does not deserve the concession of anticipatory bail.

6. Mr. H. S. Randhawa, learned counsel appearing on behalf of the complainant has also opposed the grant of anticipatory bail to the petitioner on the ground that the petitioner has committed a fraud upon the complainant and the element of fraud was from the inception stage itself and that is why all the ingredients of Section 420 IPC were fulfilled and during the course of

investigation other Sections 467, 468 and 471 IPC were added. He further submitted that even if the petitioner has joined investigation but he is bound to supply to the investigating agency the original of Annexure P-5 and the receipt. He also submitted that the forgery is continuing offence and therefore the argument raised by learned senior counsel that the FIR was registered after the delay of four years, is not sustainable.

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

8. Admittedly, the petitioner has joined investigation. This Court vide order dated 15.07.2019 had directed the petitioner to join investigation which is almost four years ago and as per learned State counsel, after seeking instructions, has stated that the matter is still pending investigation because some of the officials of the department of HUDA are still to be interrogated and the record has to be seen and that is why it is almost four years that the matter is still at the investigation stage. The basic dispute in the present case appears to be two fold. Firstly, the complainant and the petitioner initially agreed to purchase a shop together and thereafter some differences arose and as per the complainant, the petitioner after taking money from the complainant purchased the property on his own name as a sole owner whereas the case of the petitioner is that the draft which the complainant had given was much after the date of auction of property and therefore there was no question of joint ownership and joint purchase of the shop. Secondly, during the course of investigation as per learned State counsel some forgery was detected in the records of HUDA department.

9. So far as Annexure P-5 which has been attached by the petitioner with the petition is concerned, the allotment letter which is a photocopy has been

addressed to the petitioner alone. During the course of arguments, learned senior counsel has also referred to and has shown to this Court the aforesaid letter which has been attested by the Estate Officer and which the petitioner had obtained through RTI. This Court also perused the record as produced by learned State counsel, pertaining to HUDA wherein on the same date and pertaining to the same number, the allotment of the same plot has been issued to the petitioner and two other persons which are the wife of the petitioner and the complainant. However, it can be seen that the other two persons i.e. the wife of the petitioner and the complainant have been added by way of a pen and not typed.

10. The objection which has been raised by learned State counsel in the present case was only that the petitioner has not cooperated with the investigation process because he has not supplied the original of Annexure P-5 and the receipt. However learned senior counsel has specifically stated that the original was missing and was not available with the petitioner and he has rather attached Annexure P-5 which has been duly attested by the Estate Officer and he had obtained a copy by way of RTI and therefore no fault can be found of the petitioner and he cannot be denied anticipatory bail only on the ground that the original was not being produced.

11. After hearing learned counsels for the parties, this Court is of the view that the petitioner was granted interim anticipatory bail four years ago and admittedly he had already joined the investigation. The only objection raised by learned State counsel and that of learned counsel for the complainant that the petitioner is not able to produce the original of Annexure P-5 although Annexure P-5 as obtained by the petitioner through RTI has been duly attested by the Estate

Officer and which has been shown to this Court today during the course of arguments, would not become a ground for denial of anticipatory bail to the petitioner. The same is the position with regard to the receipt which learned senior counsel for the petitioner has submitted that he does not have the original receipt. Be that as it may, in the given circumstances where the petitioner has joined investigation four years ago and the matter is still at the investigation stage, the objection taken by learned State counsel and that of learned counsel for the complainant, cannot sustain. Consequently, the present petition is allowed and the order dated 15.07.2019 is made absolute.

12. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of these two petitions.

(JASGURPREET SINGH PURI)
JUDGE

July 24, 2023

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