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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32988-2023 (O & M)
Date of decision:25.09.2023

Jaswinder Singh

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Monty Goyal, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.10 dated 02.05.2022 under Sections 255, 420, 465, 467, 468, 471 and 120-B IPC registered at Police Station NRI, Ludhiana, Punjab.

2. The present FIR came to be registered on the basis of a complaint of Daljit Singh son of Harminder Singh against Indresh Jain son of Sunil Jain, Nirmal Bala daughter of Kharaiti Lal, Ranjit Singh son of Balbir Singh and Jagwinder Singh son of Jagtar Singh. As per the allegations, Harminder Singh was owner and in possession of property i.e. Plot No.90, M.C. No.XX798, comprised of Khasra No.964, 2717/2412/965/9-11, 2717/2412/96/13, 2394/1723/968-969-970-971, Khata No.373/513 as per jamabandi for the year 1963-64, situated at Village Tarf Mehal Bhagat, Abadi, Prem Nagar, Dayal Nagar, Ghumar Mandi, Tehsil and District Ludhiana, vide registered sale deed bearing Wasika No.938 dated 03.06.1969 in the record of Municipal Corporation. On his death, the

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the owners in possession. As the complainant party was residents of Malaysia, when they visited the property on 10.11.2021, they found that the boundary wall on their plot and gate was broken and 4-5 anti-social elements were standing there with in intention to take possession. On the complainant's asking them as to why they were present at the spot, no specific response was given and the said persons mis-behaved with the complainant and threatened him. He immediately called the police on their helpline on which the police party reached the spot. The complainant brought all the facts to the notice of the investigating agency and showed all the ownership documents at Police Post, Ghumar Mandi. The anti-social elements who had come to take possession were rounded up and disclosed the names of the aforementioned four persons. Accused No.1 was immediately called to the Police Post where he came present with one sale deed bearing document No.2021-22/106/1/11076 dated 22.10.2021. It was a forged and fictitious sale deed pertaining to the complainant party's land. It was clearly established that the accused had obtained the original record of ownership of the land from the officer of the Tehsildar and by putting the same plot number, same boundary and the names of same neighbourers had prepared a forged registered sale deed. This showed that the officers of Municipal Corporation were also involved in the conspiracy. In the said sale deed, accused-Nirmla Bala was shown as a seller but it was not mentioned as to how she had become the owner of the property. Accused No.3-Ranjit Singh was shown as a General Power of Attorney of Nirmla Bala whereas accused No.4-Jagwinder Singh was shown as a witness of the sale deed. All the accused were a part of the land mafia who were in search of

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opportunities to take illegal possession over the properties of the NRIs who lived abroad, Legal action was sought.

Based on the complaint, an enquiry took place. During the course of the enquiry, it transpired that the petitioner-Jaswinder Singh and one Jasmeet Singh were property dealers. When they came to know that the owners of the property resided abroad, then they alongwith Indresh Jain, in furtherance of a conspiracy prepared a fake sale deed bearing Wasika No. 2895 dated 20.09.1968 qua the said property of the complainant in the name of one Nirmal Bala @ Nirmla Bala. On the basis of the said fake sale deed in the name of Nirmal Bala @ Nirmla Bala, the petitioner and his accomplices prepared a fake power of attorney bearing Wasika No.2004 dated 03.07.1998 in favour of Ranjit Singh from the so called Nirmal Bala @ Nirmla Bala. Fake seals of the Sub Registrar had also been put on this fake power of attorney and fake and forged signatures of the Sub Registrar had been put on the said fake power of attorney. Further, on the basis of the said fake power of attorney, the said property of the complainant was transferred in favour of Indresh Jain vide sale deed bearing Wasika No.2021-22/106/1/11076 dated 22.10.2021 for a sum of Rs.52.50 lacs. Jagwinder Singh and Anil Chawla were the witnesses of the said sale deed.

It was further revealed during the enquiry that the property was falling within the limits of Municipal Corporation bearing property No.B-XX-798 and it was necessary to get its entry in the TS-I Register of the Municipal Corporation . Therefore, the fake documents of Nirmal Bala @ Nirmla Bala i.e. her affidavit, application on behalf of Nirmal Bala @ Nirmla Bala and self-declaration of Nirmal Bala @ Nirmla Bala were prepared by the present petitioner and submitted to the Municipal

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Corporation and the mobile number of the petitioner had been mentioned on the said fake documents. A fake photograph of a lady masquerading as Nirmal Bala @ Nirmla Bala had been affixed on the said fake documents. By using the said fake documents of the fictitious Nirmal Bala @ Nirmla Bala, property No.B-XX-798/1 was got allotted by the petitioner and his accomplices from the Municipal Corporation and on the basis of the said fake power of attorney and T.S-1, the said property of the complainant was transferred in the name of the Indresh Jain vide the above-noted sale deed. The connivance of the said Indresh Jain was also found established in the crime as he had known for that property was owned by the complainant.

The enquiry report of the SHO was examined and verified by the then DSP, NRI Wing, thereafter, by the AIG, NRI Wing and finally, the same was approved by the ADGP, NRI and Women, SAS Nagar. Accordingly, the FIR in question came to be registered against the petitioner and his co-accused.

3. The learned counsel for the petitioner contends that the petitioner is completely innocent and has been falsely implicated in the present case. No offence is made out against the petitioner. No wrongful gain has been availed by the petitioner. Merely because the mobile number of the petitioner was mentioned in some documents would not establish his culpability. Indresh Jain, who had purchased the property had been declared innocent by the police authorities. As the petitioner was ready and willing to join investigation, he was entitled to the concession of anticipatory bail.

4. The learned counsel for the State, on the other hand, has filed a reply dated 25.09.2023 by way of affidavit of Gurwinder Singh Sandhu,

PPS, Deputy Superintendent of Police, NRI Wing, Ludhiana. The same is

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taken on record. By referring to the contents of the said reply, he contends that during the course of enquiry, it has been established beyond doubt that it was necessary to get the entry of the property in the TS-I Register of the Municipal Corporation. Therefore, fake documents of Nirmal Bala @ Nirmla Bala, the fictitious owner of the property were created and submitted by the present petitioner and his mobile number finds mention on the said fictitious documents such as an affidavit, an application on behalf of Nirmal Bala @ Nirmla Bala and the self-declaration of Nirmal Bala @ Nirmla Bala. By using the said fake documents, the fictitious Nirmal Bala @ Nirmla Bala was able to obtain a property number from the Municipal Corporation and the entry of the property was made in the TS-I Registered. The enquiry conducted by the SHO was duly approved by the DSP, NRI Wing, AIG, NRI Wing and ADGP, NRI and Women, SAS Nagar. Once, the offence was *prima facie* established against the petitioner, he was not entitled to the concession of anticipatory bail. Even otherwise, his custodial interrogation was necessary to take the investigation to its logical conclusion.

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

6. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', has held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. **In many anticipatory bail matters, 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 ignored or overlooked and he should be granted 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***

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looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

7. In the instant case, it has been established beyond doubt that the petitioner alongwith his co-accused fabricated and forged documents to show that one Nirmal Bala @ Nirmala Bala was the owner of the property actually belonging to the complainant. Thereafter, various other documents purported to be of Nirmal Bala @ Nirmala Bala such as her affidavit, application and self-declaration were submitted by the present petitioner with the Municipal Corporation which is substantiated from the fact that the mobile number of the petitioner finds mention on the forged documents. Therefore, the offence is *prima facie* established against the petitioner. Even otherwise, the custodial interrogation of the petitioner is necessary to unravel the conspiracy and to take the investigation to its logical conclusion.

8. In view of the above, I find no merit in the present petition and the same stands dismissed.

9. It is, however, made clear that no opinion has been expressed on the merits of the case and the observations made in the present order are only for the purpose of adjudication of this bail petition.

(JASJIT SINGH BEDI)
JUDGE

September 25, 2023
sukhpreet

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