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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38882-2023 (O & M)
Date of decision:05.09.2023

Jarnail Singh

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.S. Swaich, Advocate,
for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

Mr.Rakesh Chopra, Advocate,
for the complainant.

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.28 dated 20.07.2023 under Sections 406, 420, 120-B IPC registered at Police Station Kheri Naudh Singh, District Fatehgarh Sahib.

2. The instant FIR came to be registered on the basis of a complaint of Gurjeet Singh son of Angrez Singh against Jarnail Singh (petitioner) son of Bhag at Singh alongwith Beant Singh and Gurtej Singh sons of Jarnail Singh. As per the allegations, Jarnail Singh had entered into an agreement to sell with the complainant on 31.10.2013 regarding land measuring 72 Kanals 16 Marlas situated at village Luhar Majra Khurd, Hadbast No.183, Tehsil Khamanon, District Fatehgarh Sahib owned by him,

his two sons and nephew-Gurinder Singh, who was owner to the extent of

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half share in the said land, Jarnail Singh (petitioner) and his two sons were owners to the extent of the other half share. As per the terms of the agreement, all the bank loans, etc. had to be cleared by the complainant. It was stated in the agreement that the total sale consideration had been received and the possession of the land had been given to the complainant at the spot. It was also recited in the agreement that there was no previous agreement to sell regarding the said land and nor would any such agreement to sell be entered into with some other person after the instant agreement.

Based on the agreement to sell, Gurinder Singh, the nephew of the petitioner, who was the owner to the extent of half share executed two sale deed in favour of the relatives of the complainant on 08.11.2003 and 18.05.2017 as all his outstanding dues to the banks etc. had been cleared. Similarly, all the outstanding dues of Jarnail Singh and his sons relating to loans availed from five banks had been cleared and the entire land had been got redeemed by the complainant. However, from the revenue record, the complainant came to know that Jarnail Singh had already executed an agreement to sell regarding his land measuring 12 Kanals with Gurmail Singh son of Bachan Singh. Since Jarnail Singh had not executed a sale deed in the favour of Gurmail Singh, the said Gurmail Singh had filed a suit before the Civil Court and had got executed a sale deed in his favour relating to the land measuring 12 Kanals. Therefore, the petitioner and his sons had cheated the complainant as the consideration for land measuring 72 Kanals and 16 Marlas had been received by the petitioner and his sons and Gurinder Singh but out of the said land 12 Kanals had been sold to Gurmail Singh. Faced with this situation, the complainant had entered into a separate

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arrangement with Gurmail Singh and purchased 12 Kanals at a higher price on 14.11.2019. Despite being repeatedly told to execute the sale deed, the petitioner and his sons refused to do so on one pretext or the other. Very cleverly, Jarnail Singh-petitioner had got his two sons Beant Singh and Gurtej Singh sent to America. Therefore, he had committed the offences in question since the complainant had cleared all his outstanding loans/dues but the sale deed was not being executed. Legal action was sought.

Based on the aforementioned complaint, the matter was enquired into leading to the registration of the present FIR.

3. The learned counsel for the petitioner contends that taking the allegations to be correct, no criminal offence was made out and the dispute, if any, was one of civil nature. While the complainant had not instituted a suit for specific performance, the petitioner himself had filed a suit to declaration to set aside the agreement to sell dated 31.10.2013. In fact, the agreement to sell was without consideration and no possession had been handed over to the complainant party. Further, there was a delay of 10 years in the registration of the FIR inasmuch as the agreement to sell was dated 31.10.2013 whereas the instant FIR came to be registered on 20.07.2023. As the petitioner was ready and willing to join investigation and no recovery was to be effected from him, he was entitled to the concession of anticipatory bail.

4. The learned counsel for the complainant, on the other hand, contends that the possession of the land in question was taken in 2013. All the loans availed by the petitioner and his family members had been cleared by the complainant party. The agreement to sell in question clearly talks

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about the entire sale consideration having been paid and it did not now lie in the mouth of the petitioner to state otherwise. In fact, the complainant party had been cheated twice over. The agreement dated 31.10.2013 contained a recital that there was no existing agreement with any other person and nor would any such agreement be entered into in the future. However, unknown to the complainant, the petitioner himself had agreed to sell 12 Kanals of his land to one Gurmail Singh who had approached the Civil Court and had got a decree in his favour. The complainant party had to separately pay a higher price for the purchase of the said 12 Kanals despite the agreement dated 31.10.2013, as per which the entire sale consideration for the entire land of the petitioner and his sons had been paid. Thereafter, despite the fact that the petitioner had received the entire sale consideration including the amounts paid to the bank to redeem the mortgage on the land, the sale deed was not being executed on one pretext or the other. The sequence of event clearly established that the petitioner and his co-accused had a dishonest intention at the very inception which was not only clear from the fact that there was an agreement with Gurmail Singh but also from the conduct of the petitioner in sending his sons-Beant Singh and Gurtej Singh abroad surreptitiously. He, therefore, contends that despite having spent a huge amount of money to purchase the land in question, the complainant had been cheated by the petitioner and his sons, and therefore, he was not entitled to the concession of anticipatory bail.

5. The learned counsel for the State has filed a reply dated 05.09.2023 by way of an affidavit of Raminder Singh, PPS, Deputy Superintendent of Police, Sub Division, Khamanoon, District Fatehgarh

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Sahib, Punjab. The same is taken on record. While referring to the reply, he contends that a detailed enquiry was held and the averments made in the FIR were found to be correct. In fact, the petitioner and his family members had cleared the loans of the banks availed after mortgaging the land in question. Moreover, another agreement had been entered into between Gurmail Singh and the petitioner which was contrary to the stipulation in the agreement dated 31.10.2013, and therefore, the offence was clearly established. He contends that the nature of the allegations and the magnitude of the fraud did not entitle the petitioner to the grant of the concession of anticipatory bail.

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

7. 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.

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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 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.”

8. In the instant case, it is apparent that the petitioner was in the possession of the land in question in terms of the agreement dated

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31.10.2013. While Gurinder Singh had executed two sale deeds in favour of the complainant party, the petitioner and his sons had refused to do so despite the entire payment having been made. On the contrary, unknown to the complainant party, Jarnail Singh (petitioner) entered into another agreement to sell with respect to 12 Kanals of his land with Gurmail Singh who approached the Civil Court and obtained a decree in his favour with respect to the said 12 Kanals. The complainant was, therefore, in addition to the amount paid under the agreement to sell dated 31.10.2013 made to pay a higher price separately for the purchase of the said 12 Kanals. Even thereafter, the petitioner and his sons have refused to execute the sale deed with respect to the remaining land standing in their names and have instead gone and filed a civil suit challenging the agreement to sell dated 31.10.2013. Therefore, the offence is *prima facie* established against the petitioner and his sons. Moreover, the custodial interrogation of the petitioner is certainly required to take the investigation to its logical conclusion.

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

10. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

September 05, 2023
sukhpreet

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