

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

108

CRM-M-44350-2023  
Date of decision: 05.09.2023

Harwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Mr. Vishal Aggarwal, Advocate for the petitioner.

Ms. Himani Arora, AAG, Punjab.

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**AMAN CHAUDHARY. J.**

1. Prayer in this second petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail in FIR No.180 dated 29.12.2022 registered under Sections 420, 447, 506, 511 and 34 IPC at Police Station Majitha Road, District Amritsar.
2. The facts as narrated in the FIR are that complainants being the tenants in the property in question made a complaint that the said property was owned by a Trust, namely, Kanshi Ram Kahn Devi Grover Welfare Society. The said trust is a registered Society and working for the welfare of the public. They were permitted to raise construction at their own expenses and run their business. The petitioner alongwith others by committing fraud, transferred it in their names and threatened them to vacate the demised premises. The said petitioner is a Patwari and by misusing his position and

manipulating the record, got transferred the said land in his own name by way of an exchange deed. The permission to sell the said property sought was rejected by Additional District Judge, Amritsar vide order dated 22.09.2014 and the said order was upheld by this Court vide judgment dated 04.10.2017, whereby the petition assailing the said order filed by the Trust was dismissed.

3. Learned counsel submits that the complainants had no locus standi to make a complaint, on the basis of which the FIR in question was registered, as they are merely the tenants and have no right of title to the property, which was owned by the Trust. The necessary permission had been obtained and with the consent of the parties, the exchange deed was registered. The petitioner is the bona fide purchaser, who has exchanged the land owned by the co-accused for the land in question. The Assistant Commissioner of Police, East Amritsar City vide his report dated 21.03.2023, opined that no evidence regarding offence under Section 420 IPC is brought out and the exchange deed was executed after depositing the requisite fee with the revenue department. The petitioner is ready and willing to join the investigation and cooperate with.

4. On receipt of advance notice, learned State counsel opposes the bail on the ground that this is the 2nd petition seeking anticipatory bail, the first having been withdrawn after arguing for some time as the Court was not inclined to grant relief. There is no new ground to entertain the said petition. The property being sought to be usurped by the petitioner is worth Rs.50 lac and situated at a prime location. The permission to sell the property of the Trust had been declined by the Additional District Judge and upheld by this

Court by a detailed judgment, but the petitioner exercising his influence and position and violating the order of this Court has got it transferred to himself. Copy of the order passed by this Court in CR-3479-2015, decided on 04.10.2017, has been produced. The petitioner being a government employee has flouted all rules and authority. Insofar as the enquiry report being relied upon is concerned, the same has not been accepted and DA (Legal) has categorically opined that the investigation be got conducted, copy of the same dated 06.06.2023 has been produced. The investigation in the case is thus not complete and the custodial interrogation of the petitioner is essential. He being an official of the Department and working as a Patwari, there is every apprehension of his tampering with the record and influencing the witnesses.

5. Heard learned counsel on either side.

6. The Division Bench of this Court in the case of **Manjinder Kaur vs. State of Punjab**, CRM-M-40916-2022 decided on 30.01.2023 observed and held that, “We have already held that second/subsequent/successive anticipatory bail application would not be maintainable where such an application has been dismissed by the Court on merits by passing a speaking order. Further qua the anticipatory bail application, it can be said that once a first bail application under Section 438 Cr.P.C. stands withdrawn, a second or subsequent bail application would not be maintainable merely on the ground that some new inconsequential and cosmetic change in circumstances has/have come about, further developments such as arrest of co-accused or main accused or bail granted to co-accused, different considerations, some more details, new documents or illness of the

accused. It would also not be maintainable on a plea or ground that the Court on the earlier occasion failed to consider any particular aspect or material on record or that any point then available to the accused was not taken, agitated or pressed before the Court. However, the second/subsequent bail application under Section 438 Cr.P.C. would be maintainable only if there is substantial material and substantive change in the fact situation and circumstances of the case due to subsequent events or in law.”

7. The first petition filed for anticipatory bail by the petitioner after having been argued for some time, when this Court was not inclined to grant the relief and was on the verge of being dismissed on merits, was withdrawn. The ground taken for filing the 2nd bail application by the petitioner is that in the enquiry conducted, Annexure P-9, no evidence is found against the petitioner, however, it is explicit that it does not fall within the parameters as laid down in **Manjinder Kaur** (supra).

8. Moreover, it is apposite to make a reference to the FIR, the relevant part of which reads thus:

“2. Recently, the aforesaid S.Harvinder Singh along with some unidentified persons came to the site and threatened us that he will get the demised premises vacated from us on the pretext that he has purchased this property from the aforesaid trust, but no document regarding change of ownership of the property is shown by him to us, inspire of our number of requests.

..(d) The society shall be strictly non-political and shall render its services irrespective of caste, creed and any other distinction. In this regard, it is also submitted that earlier petition under the Indian Trust Act for granting permission to sell the property of the said trust was filed by them in the District Courts at Amritsar, but the said petition was dismissed by the learned court of Shri Sham Lal, Additional District Judge, Amritsar, 22.9.2014 and

again that order revision was filed by the said trust in the Hon'ble High Court of Punjab and Haryana at Chandigarh, but the same was also dismissed by Hon'ble Justice Raj Mohan Singh of Hon'ble High Court on 4.10.2017. Thus, no permission was granted by the Court to sell out of the property of the said trust, so the question of selling the property does not arise and if there is any sale as alleged by S.Harvinder Singh by the trust to him that sale is null and void in the eyes of law. As such, from the above facts, it is established that none of the aforesaid persons has any right to interfere in to our peaceful possession over the tenanted premises in any manner and they have also no right to damage or demolish any part of the tenanted premises and to obstruct us from using the roof of the tenanted premises.”

9. It transpires from the order dated 04.10.2017, passed by this Court in CR-3479-2015, that the permission to sell the land stood categorically declined in a revision at the hands of the Trust challenging the order dated 22.09.2014 passed by Additional District Judge, Amritsar by observing that, “Since the trust property is situated in Amritsar, the aims and objects of the Trust are revolving around the welfare of the people and the activities of the Trust are charitable in nature, therefore, the area of Amritsar and its surrounding can be termed as beneficiaries of the Trust. In the event of selling the property by the trustees and taking the same to Mumbai for its utilization in Mumbai would be prejudicial to the interest of the beneficiaries and would amount to breach of the duties as per interpretation clause in terms of Section 3 of the Trusts Act.”

10. An enquiry report having surfaced purportedly in favour of the petitioner was not accepted by DA (Legal) wherein it noticed that the Deputy Commissioner vide letter dated 02.06.2023, informed that a clarification was given by Naib Tehsildar, Atari that at the time of transfer of land by way of

exchange deed, the orders passed by Additional District Judge as also the High Court were not brought to his knowledge and no permission was sought by the petitioner in this regard. It was observed that the exchange was got executed by concealing the orders passed by the Court, which calls for a deeper probe and action against the accused. It was opined that case be got thoroughly investigated by a Senior Police Officer.

11. The petitioner, by dint of his official position in the State Revenue Department, has circumvented the orders declining the permission to sell the land, by getting the land transferred in question in the name of his co-accused by adopting a novel way of an exchange deed. An element of criminality cannot be ruled out at this stage and the allegations being of such serious nature, the grant of pre-arrest bail in the present case shall be detrimental to the interest of investigation, stated to be not yet complete.

12. In **State represented by the C.B.I. vs. Anil Sharma**, 1997(4) R.C.R.(Criminal) 268, Hon'ble The Supreme Court had observed that in cases where serious allegations have been alleged and the truth needs to be elicited from the accused, the same can only be done through the custodial interrogation as compared to questioning a suspect, who is already on anticipatory bail.

13. Hon'ble The Supreme Court in **CBI vs. Santosh Karnani**, (2023) SCC Online SC 427, **Sadhna Chaudhary vs. State of Rajasthan**, (2022) SCC OnLine SC 869, **Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal and Ors.**, 2020 SCC Online SC 1089, while expounding the law on anticipatory bail relied on **Siddharam Satlingappa Mhetre vs. State of**

**Maharashtra**, (2011) 1 SCC 694, which after due deliberation on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 held thus:

- “i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v.     xx                   xx                   xx
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- xx                   xx                   xx”

14.           It is manifestly clear that anticipatory bail is not a right that may be granted in every other case. The Court has to take into consideration all the facts and circumstances and after its utmost satisfaction, grant it only in exceptional circumstances, where all the factors and parameters are met and there is no possibility of him interfering in the path of justice.

15.           Considering the facts and circumstances of the case and the judgments referred to above, the permission to join the investigation with a protective umbrella of pre-arrest bail will hamper the thorough and effective investigation to elicit the truth; there being an apprehension of the petitioner influencing the witnesses and tampering with the evidence; his custodial interrogation also stated to be imperative, this Court finds it a fit case to dismiss the petition for grant of anticipatory bail, on both counts i.e., maintainability of the 2nd petition as also on merits.

16. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner are to be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)  
JUDGE

05.09.2023  
Ankur

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