

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

201

CRM-M-46575-2022

Date of decision : 27.03.2023

Kamlesh Kaur @ Kamlesh Rani and another

Petitioners

V/S

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Ankit Gupta, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

Mr. D.S. Patwalia, Senior Advocate with
Ms. Sehar Jagjeet Singh Sandhu, Advocate
for the complainant.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioners have filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.240 dated 15.09.2022 registered under Sections 379, 406, 427, 465, 466, 467, 468, 471, 474, 120-B and 506 of the Indian Penal Code, 1860 at Police Station Model Town, District Hoshiarpur.

The above-said FIR was registered on a complaint made by Gurminder Singh Bedi alleging that when he along with his family went to his ancestral House i.e. House No.426, Gali No.07, Old Post Office Road, Mohalla Kamalpur, Hoshiarpur, he was surprised to see that the Caretaker of the house had broken all the locks of house, stolen his

belongings and started repair and renovation of the house.

Learned counsel for the petitioners submits that the petitioners have been falsely implicated in the present case. Petitioner No.1-Kamlesh Kaur @ Kamlesh Rani filed suit for permanent injunction as Power of Attorney holder of petitioner no.2-Hardyal Singh @ Hardyal Singh against the complainant which is pending adjudication before learned Civil Judge (Junior Division), Hoshiarpur. In 1996 Ved Kaur, owner of the house in question, had filed ejectment petition under Section 13 of the East Punjab Rent Restriction Act, against petitioner No.2-Hardyal Singh @ Hardyal Singh, which was allowed by the Court of learned Rent Controller, Hoshiarpur. Petitioner No.2 had filed appeal against the said order which was allowed by the then District Judge, Hoshiarpur and the ejectment petition was dismissed. The petitioners had been enjoying peaceful possession of the suit property since 1987. The petitioners have been paying the property tax of the property in dispute. The petitioners are also paying the electricity bill and the electricity meter is installed in the name of the petitioner. Now, the complainant along with his family and 02 unknown persons opened the gate of the house in dispute and forcibly entered into the house. The matter is civil in nature and civil proceedings are pending between the parties. The petitioners have complete record of their house in possession and under the grab of present FIR, the complainant party wants to throw them out of their house. Nothing is to be recovered from the petitioners and their custodial interrogation is not

required in the case. The petitioners are already ready and willing to join the investigation.

Per contra, learned State counsel and learned Senior counsel for the complainant have vehemently opposed the present petition in terms of status report filed by the State which is already on record. Learned State counsel submits that though in compliance with order dated 07.10.2022 passed by this Court, the petitioners have joined the investigation but they are not co-operating. For thorough investigation of the case, custodial interrogation of the petitioners is necessary.

Learned senior counsel for the complainant submits that the petitioners had taken one room on rent in the house in question from Ved Kaur and with the passage of time they have grabbed the entire house. The petitioners have trespassed the house, committed theft and produced forged documents. Therefore, the present petition may be dismissed.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioners are serious in nature. As per status report filed by the State, during investigation record of the owner of the electricity meter No.BA-34/0275 installed in the house in question was sought from the SDO, PSPCL, Jalandhar Road, Hoshiarpur and as per record sent by the Department, Smt. Ved Kaur is the consumer of above-said electricity meter. The Assistant Engineer, PSPCL also sent bill bearing No.50606834016 dated 19.06.2019 in

which the name of petitioner No.2-Hardyal Singh @ Hardyal Singh is mentioned. He also sent demand note for change of name. Vide order dated 04.06.2019 the name of petitioner No.1-Kamlesh Kaur @ Kamlesh Rani was incorporated in place of petitioner No.2-Hardyal Singh @ Hardyal Singh as a holder of connection of electricity meter. On the other hand, the complainant gave water and sewerage charges demand bill from 01.01.2022 to 31.03.2022 having consumer name as Ved Kaur, who is maternal aunt of the complainant, and also gave copy of registered Will executed by Ved Kaur in favour of the complainant. Thus, as per the documents available, the complainant is the owner of the house in question.

During investigation it was also found that Ved Kaur filed eviction petition against petitioner No.2-Hardyal Singh in which petitioner No.2-Hardyal Singh admitted his tenancy over the one room and the said civil suit was decreed in favour of Ved Kaur and as such petitioner No.2-Hardyal Singh confirmed the ownership of Ved Kaur over the house in question in the said eviction petition.

Keeping in view the fact that the petitioners are misrepresenting as owner of the house in question, the Commissioner, Municipal Corporation, Hoshiarpur had also submitted an application to the Senior Superintendent of Police, Hoshiarpur against the petitioners for conducting investigation in the matter. On this, the SHO, Police Station Model Town, District Hoshiarpur verified the contents of the application and as such offence under Section 94 of the Punjab

Municipal Corporation Act, 1976 has been added against the petitioners vide DDR No.23 dated 16.03.2023.

In order to divert the attention of the investigating agency and to create hindrance in the investigation of the present FIR, the petitioners filed civil suit on 07.12.2022 against the complainant whereby they have sought protection of their possession. The petitioners to achieve their mischievous motive have submitted false, fabricated and forged documents with the public authorities. In compliance with order passed by this Court, the petitioners have joined investigation but they did not cooperate, household articles of the complainant are yet to be recovered.

Furthermore, investigation is still going on in the present case. For thorough investigation of the case and for recovery of household articles, custodial interrogation of the petitioners is necessary. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in ***State Vs. Anil Sharma : (1997) 7 SCC 187*** held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition

would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

It will not be out of place to notice here that during the pendency of this petition, the petitioners were granted interim anticipatory bail vide order dated 07.10.2022 passed by this Court. The mere enjoyment of interim benefit granted by this Court does not in any manner lessen the gravity of offence and allegations which need to be considered prima facie on merits. It may perhaps send a wrong message in case anticipatory bail is granted to the petitioners.

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioners do not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed and interim protection given to the petitioners vide order dated 07.10.2022 by this court stands vacated.

Nothing said herein above shall tantamount to expression of opinion on the merits of the case.

27.03.2023*kothiyal***(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No