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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision:21.11.2023

Sohan Singh @ Ram Singh

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sushil Kumar Verma, Advocate,
for the petitioner.

Mr. Rajiv Goel, DAG, Haryana.

Mr. Jasdev Singh Mendiratta, Advocate,
With Ms. Navreet Dhaliwal, Advocate,
and Ms. Hanima Grewal, 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.134 dated 05.09.2023 under Sections 420, 467, 468, 506 and 120-B IPC registered at Police Station Jakhal, District Fatehabad.

2. The brief facts of the case are that Mohan Singh and Binder Singh filed a complaint with the investigating agency stating that they used to sell their crops through the firm of Sohan Singh @ Ram Singh (petitioner) who was a commission agent. Over a significant period of time, a sum of Rs.1.53 Crores became due to them (complainants). They (complainants) demanded this amount from Sohan Singh who stated that as he did not have

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the said amount, he was ready and willing to execute a sale deed of 05 acres of land in their (complainants') favour in lieu of the amount of Rs.1.53 Crores. On the assurance of the petitioner, an agreement was entered into on 23.05.2022 (R-2) between them (complainant party) and Sohan Singh @ Ram Singh (petitioner). The possession of the land measuring 40 kanals was also handed over to them (complainant party). However, Sohan Singh refused to executed the sale deed in their (complainant party's) favour and therefore, a civil suit for specific performance was instituted before the Civil Court, Tohana. Sohan Singh (petitioner) intentionally did not appear before the Court and a status quo order was passed against him. Thereafter, a Panchayat took place in which Sohan Singh undertook to execute the sale deed in question. In pursuant to the undertaking, they (complainant party) purchased stamp papers of Rs.8,15,000/- on 15.06.2023 and Sohan Singh presented himself before the Sub Registrar, Kullan, Tehsil Tohana. However to their (complainant party's) surprise, it transpired that the land in question had been agreed to be sold by Sohan Singh (petitioner) to Jarnail Singh and Gamdur Singh (co-accused) who had instituted a civil suit against them (complainant party) and Sohan Singh (petitioner) wherein on the statement of Sohan Singh, a status quo order had been passed against Sohan Singh (petitioner) and them (complainant party). On an enquiry being made, they (complainant party) came to know that with a view to cheat them (complainants), he (petitioner-Sohan Singh) in conspiracy with his co-accused Jarnail Singh and Gamdur Singh to grab the amount of Rs.1.53 Crores, had got prepared an agreement to sell dated 06.05.2022 (R-1) and he (Sohan Singh-petitioner) by appearing in the case filed by Jarnail Singh and

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another had deposed in favour of the plaintiffs therein facilitating the passing of a status quo order. This fact had been concealed from the Panchayat when the same was convened. Thus, apparently, on the one hand, an agreement to sell had been executed in their (complainant party's) favour on 23.05.2022 whereas on the other hand, the petitioner had got filed a civil suit for permanent injunction based on a forged and fabricated agreement dated 06.05.2022 purportedly in favour of Jarnail Singh and Gamdur Singh and had suffered a statement in their (co-accused Jarnail Singh and Gamdur Singh's) favour so that the sale deed could not be executed in their (complainant party's) favour.

Based on the aforementioned facts, the instant FIR came to be registered.

3. The learned counsel for the petitioner contends that a perusal of the FIR would reveal that the petitioner is innocent and had been falsely implicated. There were some transactions between the complainants and the petitioner with regard to sale and purchase of crops. Multiple civil suits were pending regarding the land in question. The case was based entirely on documentary evidence which was already on record in the said civil suits. The petitioner had joined investigation and had co-operated with the same. Therefore, he was entitled to the concession of anticipatory bail.

4. The learned counsel for the State alongwith the learned counsel for the complainants, however, contend that the petitioner had clearly committed the offence in question. A sum of Rs.1.53 Crores was due to the complainants. As the petitioner stated that he did not have the money, he

was ready and willing to execute the sale deed with respect to 05 acres of

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land and an agreement to sell was entered into on 23.05.2022 but the sale deed was not executed. The complaints were forced to institute a civil suit for specific performance in which the petitioner did not put in appearance and a status quo order was passed. On the other hand, by forging and fabricating an ante-dated agreement to sell dated 06.05.2022 in favour of Jarnail Singh and Gamdur Singh, the petitioner got them to file civil suit for injunction against the complainants and himself (petitioner), appeared in the Court and suffered a statement in their (Jarnail Singh and Gamdur Singh's) favour. This was done so as to avoid execution of the sale deed in favour of the complaints. The factum of an earlier agreement to sell dated 06.05.2022 being in existence was not disclosed to the Panchayat or to the complainant party. Thus, it was established beyond doubt that the offence in question had been committed. Merely because civil proceedings had been initiated and the case was based on documentary evidence did not entitle the petitioner to the grant of anticipatory bail once an offence was *prima facie* made out. They, therefore, contend that the petitioner was not entitled to the concession as prayed for.

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 Livelaw (SC) 870***' 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:-

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“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***

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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.”

7. As has been enumerated hereinabove, on account of his inability to pay a sum of Rs.1.53 Crores to the complainants, the petitioner entered into an agreement to sell dated 23.05.2022 for the said amount and handed over the possession to the complainants. In order to avoid execution of the sale deed, he entered into ante-dated agreement to sell dated 06.05.2022 with Jarnail Singh and Gamdur Singh and got them to file a civil suit in which he suffered a statement in their (Jarnail Singh and Gamdur Singh's) favour. Quite to the contrary, in the civil suit instituted by the complainants, the petitioner has chosen not to appear. Thus, it is *prima facie* established that the offence in question has been committed by the petitioner in connivance with his co-accused Jarnail Singh and Gamdur Singh. Merely because the petitioner has joined the investigation and the case is based on documentary evidence are no grounds to grant the concession of anticipatory bail to the petitioner, moreso, when a *prima facie* offence is made out. Therefore, to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required.

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

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9. 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 on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

November 21, 2023
sukhpreet

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