

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

CRM-M-53219-2023

Date of Decision:-21.11.2023

Nanak Chand.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Gaurav Tyagi, Advocate for the Petitioner.

Mr. Rajiv Goel, Deputy Advocate General, Haryana.

Mr. Baljeet Beniwal, Advocate for the Complainant.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.600 dated 19.09.2023 under Sections 406, 420, 506, 120-B IPC registered at Police Station City Ballabhgarh, Faridabad, Haryana.

2. The present FIR came to be registered on the complaint of one Parveen Kumar who alleged that in the month of January 2023 the accused namely Subhash, Devender and Bijender met him and informed him that they were having a land measuring 10 Kanal 2.6 Marlas for sale and its owner was willing to sell the same for a total sale consideration of Rs.30 lacs. After discussions with his (complainant's) father he agreed to buy the same. On 02.03.2023 the aforementioned accused along with Nanak Chand (petitioner) showed the mutations dated 13.07.2020, 24.02.2022 and 25.05.2022 bearing Khewat No.683, land measuring 10 Kanal 2.6 Marla to prove the ownership and entered into the agreement to sell for a total sale consideration of Rs.30 lacs out of which he (complainant) had paid Rs.12 lacs in cash. The target date for execution of the sale deed was 2.6.2023. As he had sufficient funds, he approached the accused persons for execution of

the sale deed but they delayed the matter stating that the wife of Nanak Chand (petitioner) was not agreeing to execute the sale deed. On inquiry it transpired that infact Nanak Chand was not the owner of the land and he in collusion with the officials of the revenue department had prepared forged documents to grab his money. He also came to know that the wife of Nanak Chand and another had earlier filed a civil suit in respect of the above said land which had been dismissed by the courts at Faridabad and an appeal met the similar fate. Thus, the accused had cheated him (complainant).

During the investigation, the documents were collected and it came to light that the land in question had earlier been sold in the year 1979 by Sukhdei and her brothers. The sale deeds had been challenged by the wife of the petitioner and the said suit had been dismissed by the Civil Judge, Faridabad on 25.07.2016. Therefore, she had never been declared to be the owner of the disputed land and the revenue records shown by the petitioner were forged and fabricated. After the dismissal of the said suit the wife of the petitioner had preferred an appeal bearing no.116 of 2016 and the said appeal had also been dismissed by Additional District Judge, Faridabad vide order dated 28.11.2016. An RSA was preferred before this Court and the same came to be dismissed vide order dated 21.08.2018 (Annexure R-1).

The Complainant had approached the petitioner for a refund but the same had been refused. It had also been revealed that the petitioner had earlier entered into an agreement with two other persons in respect of the said land and had grabbed their money as well.

3. The Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He along with his wife had been residing in Delhi for long and the land was being cultivated by others. The cultivators had stopped paying him any lease amount. Some other villagers had approached him (petitioner) to purchase his land. However, the petitioner had stated that he did not have the possession of the land. Upon this Subhash and the other co-accused had told him that they would get possession themselves. Though the agreement to sell had been entered into it was the complainant who had not made the remaining payment of Rs.2 lacs because of which the sale deed could not be executed. In fact, the agreement was extended for a further 06 months till 02.12.2023. He therefore contends that as it was a dispute of a civil nature no case for custodial interrogation was made out and the petitioner was entitled to the

concession of anticipatory bail.

4. The Counsels for the State and the Complainant on the other hand by referring to the reply dated 03.11.2023 filed by Mr. Vishnu Parshad, Assistant Commissioner of Police, Ballabhgarh, District Faridabad contends that the petitioner had cheated the complainant of a huge amount of money. The land in question was never in his ownership and possession and the question of entering into agreement to sell with the complainant did not arise. They further contend that the offence was *prima facie* established and the investigation was to be taken to its logical conclusion no ground for the grant of anticipatory bail was made out and the petition ought to be dismissed.

5. I have heard 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:-

" 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 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, when this matter had come up for hearing on 19.10.2023 as the court was not inclined to grant the concession of pre-arrest bail, the Counsel for the petitioner had stated that the petitioner was ready and willing to execute the sale deed. The matter was adjourned to 08.11.2023 on which date it was mutually agreed between the parties that the sale deed would be executed on 09.11.2023. However, the petitioner did not come forth. On 14.11.2023, the SHO concerned was directed to be present in court and on 15.11.2023 the petitioner and the complainant were directed to appear before the SHO who was to accompany them to the office of the Tehsil where the petitioner would execute the sale deed in favour of the complainant. Despite the orders passed by this Court, the petitioner has chosen not to appear before the Tehsildar in order to execute the sale deed in question. Quite to the contrary he has filed an application dated 20.11.2023 in court today for placing on record documents to show that he was unwell and a jamabandi to show that he was the owner in possession of the property. The medical reports do not disclose any serious condition to show that the petitioner could not go to the Tehsil to execute the Sale Deed. Therefore, it is apparent that the petitioner is not interested in executing the sale deed in favour of the complainant as the land in question never did vest in him or his wife. The investigation conducted so far also establishes the said fact that neither the petitioner nor his wife were ever owners in possession of the land in question and documents had been forged to show that they (petitioner and family) are infact owners in possession. Therefore,

the offence stands *prima facie* established. As the investigation which is pending is to be taken to its logical conclusion, and the offence is *prima facie* established, the custodial interrogation of the petitioner is certainly required.

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

9. However, the observations made hereinabove are only for the purposes of deciding this anticipatory bail petition 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

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>