

220 (2 cases)

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

(1)

CRM-M-55497-2022

GURWINDER SINGH WALIA AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB

...Respondent

(2)

CRM-M-57134-2022
Date of decision:09.02.2023

RAJ KUMAR AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. P.K.S. Phoolka, Advocate
for the petitioners
in ***CRM-M-55497-2022***.

Mr. P.S. Ahluwalia, Advocate
for the petitioners
in ***CRM-M-57134-2022***.

Mr. Subhash Godara, Addl. A.G., Punjab.

Mr. Ankush Singla, Advocate
for the complainant (in both cases)

HARSH BUNGER, J.

This order will dispose of two petitions filed by petitioners
therein seeking grant of anticipatory bail in FIR bearing No.183 dated

12.11.2022, under Sections 420, 406 and 120-B IPC, registered at Police Station Sadar Bathinda, District Bathinda.

First petition i.e. ***CRM-M-55497-2022***, has been filed by petitioners namely, Gurwinder Singh Walia and Sukhwant Singh, who are the vendees from the original owners of land in question. Both Gurwinder Singh Walia and Satwant Singh had filed separate applications seeking anticipatory bail before the Court of Additional Sessions Judge Bathinda which came to be dismissed vide two separate orders dated 19.11.2022.

Second petition i.e. ***CRM-M-57134-2022***, has been filed by petitioners namely, Raj Kumar and Ashok Kumar both sons of Sh. Des Raj, who are the original owners of land in question. Both Raj Kumar and Ashok Kumar filed separate applications seeking anticipatory bail before Additional Sessions Judge Bathinda which were dismissed vide two separate orders dated 30.11.2022.

The land in question measures 8 Kanals – 4 $\frac{2}{3}$ Marlas out of total joint land measuring 41 Kanals – 12 Marlas, situated at main Malout Road, village Behman Diwana (Hadbast No. 74), Tehsil and District Bathinda (as per jamabandi for the year 2018-19).

FIR bearing No. 183 dated 12.11.2022 (Annexure P-1), was registered on the complaint dated 27.10.2022 submitted by Hardeep Singh, Sukhwinder Singh & Saloni Garg wherein it is alleged that the accused persons i.e. the petitioners in both Petitions have committed cheating, fraud and forgery in reference to the sale transactions as regards the aforesaid land in question involving payment of huge amounts in cash.

The chronology of events, as can be culled out from the perusal of both the paper books, is as under:

<u>S.No.</u>	<u>Date</u>	<u>Event</u>
A.	17.01.2022	<i>Raj Kumar / Ashok Kumar, the original owners of land in question entered into an Agreement to sell (hereinafter referred as “1st Agreement”) for the sale of said land, with (1) Gurwinder Singh Walia, (2) Sukhwant Singh, (3) Mohit Sood (Vendees under 1st Agreement).</i> <i>Under the 1st Agreement, the earnest money of Rs. 1,10,00,000/- (Rupees One Crore and Ten Lakh only) is stated to have been received by original owners of land in question in the following manner:</i> <i>(a) Rs. 78,00,000/- in Cash;</i> <i>(b) Rs. 10,00,000/- vide Cheque No. 000164 dated 17.01.2022 drawn on HDFC Bank issued by Gurwinder Singh in favour of Ashok Kumar</i> <i>(c) Rs. 22,00,000/- vide Cheque No. 001040 dated 17.01.2022 drawn on HDFC Bank issued by Sukhwant Singh in favour of Raj Kumar</i> <i>As per the 1st Agreement, the target date for execution of Sale Deed was fixed as 08.09.2022 and Vendees therein were granted the right to get the sale deed registered in favour of any person they wanted. The vendees were further granted the right/authority to further enter into an agreement to sell qua the land in question with anyone else.</i>
B.	12.07.2022	<i>Gurwinder Singh Walia / Sukhwant Singh / Mohit Sood (Vendees under the 1st Agreement), acting upon the 1st agreement, proceeded to execute an Agreement to sell dated 12.07.2022 (hereinafter referred as “2nd Agreement”) for the sale of abovesaid land in question, with (1) Hardeep Singh son of Major Singh, (2) Sukhwinder Singh son of Lachhman Singh, (3) Saloni Garg wife of Girdhari</i>

		<i>Lal (Complainants of FIR No. 183, dated 12.11.2022)</i> <i>Under the 2nd Agreement, the earnest money of Rs. 1,60,00,000/- (Rupees One Crore and Sixty Lakh only) is stated to have been received by Gurwinder Singh Walia / Sukhwant Singh / Mohit Sood (Vendees under the 1st Agreement)</i> <i>As per the 2nd Agreement, the target date for execution of Sale Deed was fixed as 30.10.2022 and it was stipulated that the Registry (Sale Deed) will be got executed by calling real owners OR by first getting the registry executed in the names of Gurwinder Singh Walia / Sukhwant Singh / Mohit Sood (Vendees under 1st Agreement) and then executing the registry in the name of Hardeep Singh / Sukhwinder Singh / Saloni Garg (Vendees under 2nd Agreement)</i>
C.	12.07.2022	<i>On the same day i.e. 12.07.2022, when the 2nd Agreement was executed, a receipt is executed on the reverse side of 1st Agreement, showing receipt of Rs. 50,00,000/- in Cash by Raj Kumar / Ashok Kumar (original owners of land in question) from Gurwinder Singh Walia / Sukhwant Singh / Mohit Sood (Vendees under 1st Agreement) and further depicting extension of target date under the 1st Agreement from 08.09.2022 to 30.10.2022. Thus, the earnest money under the 1st Agreement becomes Rs.1,60,00,000/-.</i> <i>It is apposite to note here that now the target date for execution of sale deed under both the agreement(s) becomes 30.10.2022.</i>
D.	11.10.2022	<i>Before the target date (30.10.2022); a compromise / Affidavit (Annexure P-4 in CRM-M-55497) is stated to have been executed by Gurwinder Singh Walia / Sukhwant Singh / Mohit Sood (Vendees under 1st Agreement) in favour of Raj Kumar / Ashok Kumar (original owners of land in question), whereby the 1st Agreement was cancelled.</i> <i>This compromise / Affidavit dated 11.10.2022 reflects that Raj Kumar / Ashok Kumar</i>

		(original owners of land in question) have returned the whole amount and <u>due interest / compensation</u> to Gurwinder Singh Walia / Sukhwant Singh / Mohit Sood (Vendees under 1st Agreement), in the following manner: (i) Rs. 24,00,000/- deposited by Raj Kumar in HDFC Bank Account of Sukhwant Singh vide UTR No. 5202210147330394 on dated 14.10.2022 (ii) Rs. 11,00,000/- deposited by Ashok Kumar in HDFC Bank Account of Gurwinder Singh Walia vide UTR No. FDRLR52022101400490597 on dated 14.10.2022 (iii) <u>Remaining amount received in cash.</u> Note:- Translated version of compromise / Affidavit dated 11.10.2022 depicts as if the same is signed by Gurwinder Singh Walia / Sukhwant Singh / Mohit Sood (Vendees under 1st Agreement); however, the vernacular of this compromise / Affidavit dated 11.10.2022 shows that Mohit Sood has not signed on the same.
E.	27.10.2022	Upon learning about the abovesaid transaction, Hardeep Singh; Sukhwinder Singh and Saloni Garg (Complainants) gave a complaint to S.S.P., Bathinda, alleging cheating, fraud and forgery against Raj Kumar / Ashok Kumar (original owners of land in question) and Gurwinder Singh Walia / Sukhwant Singh / Mohit Sood (Vendees under 1 st Agreement)
F.	12.11.2022	The abovesaid complaint was enquired into by Incharge Special Staff Bathinda and case FIR bearing No. 183 dated 12.11.2022, was registered under Sections 420, 406 and 120-B IPC, at Police Station Sadar Bathinda, District Bathinda against Raj Kumar / Ashok Kumar (original owners of land in question) and Gurwinder Singh Walia / Sukhwant Singh / Mohit Sood (Vendees under 1 st Agreement).
G.	19.11.2022 and 30.11.2022	The petitioners in both the petitions sought anticipatory bails in case FIR bearing No. 183 dated

		<i>12.11.2022 by filing their respective petitions, however the same were dismissed by the Additional Sessions Judge, Bathinda vide separate orders.</i>
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In the backdrop of the aforementioned facts and circumstances, the present petitions have been filed before this court for seeking anticipatory bails.

Learned counsel for the petitioners in the first petition i.e. **CRM-M-55497-2022** (filed by Gurwinder Singh Walia and Sukhwant Singh) has inter-alia submitted that the present dispute is a purely civil dispute that has been given a colour of criminal nature as the petitioners had no motive to cheat and they are ready and willing to return the consideration amount of Rs. 1,60,00,000/- paid by the complainants.

Similarly, learned counsel for the petitioners in **CRM-M-57134-2022** (filed by Raj Kumar and Ashok Kumar) has also submitted that a purely civil dispute has been given cloak of criminal dispute. It is additionally submitted that they (Raj Kumar / Ashok Kumar) have no connection with the complainants and they were not aware of any agreement to sell executed by Gurwinder Singh Walia, Sukhwant Singh and Mohit Sood with the complainants. Interestingly, they have denied the factum of receipt of Rs. 50 lakhs on 12.07.2022 as per receipt executed on the reverse side of 1st Agreement. It is stated that the 1st agreement dated 17.01.2022 entered between the petitioners in CRM-M 55497 of 2022 (Gurwinder Singh Walia and Sukhwant Singh) with them stood cancelled upon payment of double the amount to Gurwinder Singh Walia and Sukhwant Singh and they have been falsely implicated.

On the strength of the aforesaid submissions, the counsel for the petitioners have prayed for the grant of anticipatory bail to the petitioners.

Per contra, learned State counsel has submitted a short reply by way of affidavit of Narinder Singh, PPS, Deputy Superintendent of Police (Rural), District Bathinda on behalf of respondent-State of Punjab, which is taken on record, subject to all just exceptions.

Learned State counsel while opposing the bail petitions, referred to the following extract of the reply:

5.During police inquiry and investigation done so far, it is very much clear that the accused-petitioners in connivance with other accomplice hatched pre-planned conspiracy in order to commit cheating and misappropriate the amount from the complainants and to accomplish the ill motive prepared forged documents i.e. sale agreement dated 17.01.2022 (on stamp papers of 12.01.2022), payment receipt dated 12.07.2022 and compromise deed dated 11.10.2022. The accused had prepared compromise deed dated 12.10.2022 without any plausible reason and at the back of complainants. The accused were failed to explain the source of money and to provide the detail of payment transaction, either of dated 17.01.2022, 12.07.2022 or 11.10.2022/14.10.2022. The connivance of alleged witnesses cannot be ruled out in the commission of offence.

6. **That the custodial interrogation of the accused-petitioners is required as to recover the misappropriated amount from the accused-petitioners, which has been received by them from the complainants and misappropriated by them in connivance with accomplice and to know the role and involvement of any other persons and also to ascertain as to whether accused are involved into money laundering business or not.** The custodial interrogation is also required on account of whether

the accused have committed cheating with any other innocent persons showing the property in question taking the undue advantage of all of sudden rising property value all of sudden on Malout Road, Bathinda...

Learned State counsel submitted that the enquiry conducted so far has revealed the commission of offence of cheating / criminal breach of trust involving huge amount of transactions. Learned State Counsel has further impressed that custodial interrogation of petitioners is required to ascertaining the role of other persons involved into the money laundering business as cash transactions of huge amount against the Government norms and regulations have been admittedly carried out between the parties. It is stated that the custodial interrogation is also required for the recovery of ante-dated documents as also the cash amount of more than Rs. 3 crores which has exchanged hands during the course of the present transaction. Learned State counsel has submitted that the offence is grave and as such the petitioners are not entitled to bail.

The complainants of present FIR have also caused appearance through their counsel, who handed over a compilation of documents in court, consisting of:

- (a) *Copy of plaint dated 09.11.2022 of Civil Suit for declaration tilted as “Sukhwant Singh and another Versus Hardeep Singh and others”*
- (b) *Copy of Injunction order dated 28.10.2022 passed in civil suit bearing number CS-2041-2022 titled as “Mohit Sood Versus Raj Kumar etc.”,*
- (c) *Copy of Plaint dated 28.10.2022 in Civil Suit for permanent injunction titled as “Mohit Sood Versus Raj Kumar etc.”*

(d) *Copy of bail application filed by Sukhwant Singh before the Court of Sessions Judge, Bathinda.*

The abovesaid compilation submitted by counsel for the complainants was taken on record, subject to all just exceptions.

Learned counsel for the complainants highlighted the conduct and culpability of the petitioners, who are stated to have not come to the Court with clean hands as they have wilfully concealed the material facts regarding the two Civil Suits i.e.

(i) *Civil Suit filed by Mohit Sood on 28.10.2022 against Raj Kumar / Ashok Kumar (original owners of land in question), and;*

(ii) *Civil Suit filed by Gurwinder Singh Walia / Sukhwant against the complainants on 09.11.2022.*

Learned counsel for the complainants submitted that the petitioners in **CRM-M 55497 of 2022** (Gurwinder Singh Walia and Sukhwant Singh) have taken a wrong plea that the matter involved in the case is of civil nature and that they are ready to return the amount of Rs.1,60,00,000/- taken from the complainants; whereas the said petitioners have already filed a Civil Suit for declaration wherein they had denied receiving of Rs. 1,60,00,000/- from the complainants as earnest money. In the suit, a plea has been taken that they have received only Rs. 80,00,000/- at the time of execution of agreement to sell dated 12.07.2022 and a further sum of Rs. 22,00,000/- was received by them from one Rajiv Kumar. Learned counsel for the complainant submits that in the suit filed by Gurwinder Singh Walia and Sukhwant Singh (petitioners in **CRM-M 55497 of 2022**) a categorical plea was taken that they were present in the office of Sub-Registrar, Bathinda on 30.10.2022 throughout the day but the complainants (defendants in the suit) had

failed to come present in the office of Sub-Registrar, Bathinda and thus, remained failed to pay the amount of balance sale consideration, which was a gross breach of the agreement to sell dated 12.07.2022. It is submitted that once Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) had already executed compromise/Affidavit dated 11.10.2022 for cancelling the 1st Agreement with Raj Kumar / Ashok Kumar (original owners of land in question) then how they could have executed the sale deed in favour of the complainants on 30.10.2022. Learned counsel further submitted that in the suit filed by Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) a specific prayer has been made for declaration that the part payment of the amount of earnest money actually received by them and Mohit Sood (defendant no. 5 in the suit) i.e. Rs. 1,02,00,000/- be declared forfeited to them. Learned counsel contends that this civil suit filed by Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) clearly spells out the act of cheating on the part of petitioners in both the petitions and Mohit Sood, in connivance with each other. Accordingly, it is prayed that the petitioners in both the petitions are not entitled to the concession of anticipatory bails as they have not come to court with clean hands, thus their petitions be dismissed.

I have heard learned counsel for the respective parties and have perused the paper books.

Pre-arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent

persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

After considering the rival contentions of the counsel for the parties in the backdrop of the chronology of events as indicated above and from the perusal of the documents placed on the record, it is revealed that:

- (a) *Raj Kumar / Ashok Kumar (original owners of land in question) while entering into the first agreement dated 17.01.2022 with Gurwinder Singh Walia, Sukhwant Singh and Mohit Sood; had specifically given them the right to further enter into any deal / agreement for selling the said land to anyone;*
- (b) *On the basis of the first agreement dated 17.01.2022; Gurwinder Singh Walia, Sukhwant Singh and Mohit Sood further entered into the second agreement dated 12.07.2022 for selling the same land to the complainants (Hardeep Singh, Sukhwinder Singh & Saloni Garg), thus the first agreement was acted upon and third party rights were created in favour of the complainants;*
- (c) *From a bare reading of the compromise / Affidavit dated 11.10.2022 executed by Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) for cancelling the first Agreement dated 17.01.2022 with Raj Kumar / Ashok Kumar (original owners of land in question), it is apparent that Raj Kumar / Ashok Kumar were aware of the second agreement dated 12.07.2022 between Gurwinder Singh Walia, Sukhwant Singh and Mohit Sood and the complainants;*
- (d) *The Compromise / Affidavit is stated to be executed on dated 11.10.2022, however it allegedly records the payment of Rs. 24,00,000/- and Rs. 11,00,000/- by Raj Kumar and Ashok Kumar into the accounts of Sukhwant Singh and Gurwinder Singh Walia respectively, on 14.10.2022. This apparently shows that this compromise / Affidavit is ante-dated;*
- (e) *Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) in the civil suit filed by them have pleaded that although in the agreement to sell dated 12.07.2022 executed with the complainants it was written that earnest money of Rs. 1,60,00,000/- has been received whereas actually only Rs. 1,02,00,000/- were received by them and even that amount stands forfeited;*
- (f) *Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) have concealed the factum of filing of civil suit for declaration by them;*

- (g) *In the FIR, it is alleged that the original land owners i.e. Raj Kumar and Ashok Kumar, had accepted Rs.50,00,000/- from Gurwinder Singh Walia, Sukhwant Singh and Mohit Sood in the presence of the complainants and issued receipt;*
- (h) *Raj Kumar / Ashok Kumar (original owners of land in question) in their petition i.e. CRM-M-57134-2022 have denied receipt of Rs 50,00,000/- from Gurwinder Singh Walia, Sukhwant Singh and Mohit Sood;*
- (i) *Raj Kumar / Ashok Kumar (original owners of land in question) have taken a categorical stand in their petition i.e. CRM-M-57134-2022 that they have repaid double of the earnest money to Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) as was taken by them under the first agreement dated 17.01.2022;*
- (j) *In both the petitions i.e. CRM-M-55497 of 2022 filed by Gurwinder Singh Walia and Sukhwant Singh and CRM-M-57134-2022 filed by Raj Kumar / Ashok Kumar (original owners of land in question), they have admitted high value cash transactions between them;*
- (k) *The cheques of Rs. 1.2 crores as mentioned in Para 5 (e) of the petition (CRM-M 55497 of 2022) filed by Gurwinder Singh Walia and Sukhwant Singh are dated 15.11.2022 i.e. after the registration of the FIR in question.*

From the aforementioned facts and circumstances, it prima facie appears that Raj Kumar / Ashok Kumar (original owners of land in question) in connivance with Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) got cancelled the first agreement to sell dated 17.01.2022 despite having the knowledge that Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) had already executed another agreement to sell dated 12.07.2022 on the basis of first agreement dated 17.01.2022, whereunder huge amount of money was received. Thus, neither Raj Kumar / Ashok Kumar (original owners of land in question) wanted to sell the property nor Gurwinder Singh Walia and Sukhwant Singh (petitioners in CRM-M 55497 of 2022) wanted to transfer the property as per agreement dated 12.07.2022 executed with the complainants. Rather they (Gurwinder Singh Walia and Sukhwant Singh)

filed the civil suit seeking declaration that the earnest money be declared as forfeited; whereas before this court a stand is being taken that they are ready to return the amount of Rs. 1,60,00,000/- to the complainants and that too by concealing the factum of filing of civil suit. In ***S. P. Chengalvaraya Naidu (dead) by L.Rs v. Jagannath (dead) by L.Rs and others AIR 1994 Supreme Court 853*** the Hon'ble Apex Court has held as under :

"The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely. We have not hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

In the present case, the argument that the issue involved is simply civil in nature is not forthcoming, neither from the aforementioned facts nor from the conduct of the parties. The real intent of the parties would reveal in thorough investigation by the investigating agency including the custodial interrogation of the accused persons regarding which prayer has been made by the investigating agency.

Admittedly, this is a case involving cash transactions to the tune of crores of rupees and it involves movement of funds from one hand to another so as to conceal the origin of funds and it requires systematic and analysed investigation. Hon'ble Supreme Court in the case of

Y.S. Jagan Mohan Reddy Vs. CBI, (2013) 7 SCC 439. observed as under:

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

In case of ***State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268***, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful information.

Considering the gravity of the offence and also the contrary stands taken by the petitioners on material aspects; this Court is of the considered view that custodial interrogation of the petitioners is very much necessary for complete and effective investigation and if the same is denied

to the investigating agency, that would leave many loose ends, gaps and lacuna in the investigation, thus adversely affecting the case.

Keeping in view the above facts and circumstances, the present (both) petitions under Section 438 CRPC seeking grant of anticipatory bail to the petitioners in case FIR No. 183 dated 12.11.2022 under Sections 420, 406 and 120B IPC registered at Police Station Sadar Bathinda District Bathinda are accordingly dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petitions.

February 09, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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