

CRM-M-55719-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55719-2023
Reserved on: 21.11.2023
Pronounced on: 04.12.2023

Vinod ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate and
Mr. Shivam Sharma, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Rakesh Nehra, Sr. Advocate with
Ms. Aasth Sahotra, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
113	16.03.2022	Badshahpur, District Gurugram	406, 420, 467, 468, 471, 120-B & 201 IPC and Sections 7, 8 & 13(1)(B) of P.C. Act

1. The petitioner, apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail by filing the present petition on 02.11.2023.
2. Vide interim order dated 06.11.2023, this Court had granted interim bail to the petitioner, subject to compliance of some conditions and the said order is continuing till date.
3. Facts of the case are being extracted from reply dated 17.11.2023 filed by concerned Assistant Commissioner of Police, which reads as under:-

“2. That the brief facts of the present case are that a complaint no. 2962/CP/22/APR dated 02.03.2022 and 206-5P dated 02.03 2022 was received in the police station for lodging FIR against Subhash Chand, Smt. Shel Narang, Bhim Singh, Vinod, Gurugram and other accused who in collusion with each other tried to grab the land owned and possessed by the complainant and his wife by preparing forged and fabricated documents and getting registered a forged and fabricated sale deed

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bearing vasika no. 11493 dated 24.02.2022 on the basis of forged and fabricated GPA no. 13907 dated 18.09.1996. The complainants namely Puran Manchanda and Smt. Pratibha Manchanda, are owner in possession of land bearing rect. No. 55, killa No 3/(7-9). 4/1(7 13) total measuring 15 kanal 2 marla situated within the revenue estate of Village Begampur Khatola, Tehsil Kadipur, District Gurugram since last more than 30 years. The complainants never sold out the aforesaid land to anybody nor ever executed any power of attorney in any manner in favour of any person. On 28.02.2022 the complainant Puran Manchanda alongwith Mr. Basant Raghav went to Patwar Bhawan Gurugram for obtaining revenue papers of his aforesaid land wherein he was shocked and surprised to know that a person known as Bhim Singh Rathi came to the halqa patwari for sanctioning of mutation of the aforesaid land of the complainants on the basis of forged and fabricated sale deed bearing vasika No 11493 dated 24.02.2022. On enquiry, the complainant Puran Manchanda further came to know that the said forged and fabricated sale deed alleged to be registered in the office of Sub-Registrar Kadipur, District Gurugram has been executed and got registered by Subhash Chand on the basis of forged and fabricated GPA Vasika No. 13907 dated 18.09.1996 alleged to be registered in the office of Sub-Registrar-V, South East Delhi. However, the complainants never executed or registered any such GPA in favour of any alleged Subhash Chand, nor they ever met him or know him in any manner. He is totally stranger to the complainants. The alleged GPA bearing vasika No. 13907 dated 18.09.1996 and the alleged sale deed bearing vasika No. 11493 dated 24.02.2022 are totally false, forged, fabricated, illegal and fraudulent documents created by accused in collusion with other persons and also colluding with the officials of Sub-Registrar concerned without any notice, knowledge and involvement of the complainants in any manner. The complainants never executed and got registered the aforesaid GPA in any manner nor there had ever been any involvement of the complainants in execution and registration of the alleged GPA or the alleged sale deed in any manner. The original sale deed of the aforesaid land is with them te complainants The perusal of forged and fabricated sale deed would reveal that the accused have not mentioned the PAN Number in the alleged sale deed, nor there is any reference of depositing 1% amount of TDS which is mandatory to be deposited before execution and registration of the sale deed The current market value of the aforesaid land measuring 15 kanal 2 marla of the complainants is not less than Rs 50 crores wherein the alleged sale deed had been shown to be executed fraudulently showings sale consideration of meagre amount of Rs. 6,60,62,500/- The complainants never received any such alleged amount as shown in the alleged sale deed bearing Vasika No. 11493 Dated 24.02.2022 which has been forged and fabricated by the accused persons in collusion of the witnesses, scribe and officials of the Sub-Registrar Tehsil Kadipur Distt-Gurugram to cause wrongful loss to the complainants and wrongful gain to themselves. Prayer was made to take legal action. Thereupon, the above mentioned FIR was registered.

3. That the investigation of the present case was started by SI Virender Singh. During the course of investigation of the present FIR, the relevant record was obtained from Kadipur Tehsil. The certified copies of Mutation no. 4490 dated 28.02 2022 and 4491 dated 03.03.2022 were obtained from the concerned Patwari.

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4. That thereafter, the investigation was conducted by the Economic Offence Wing-1, Gurugram During investigation, the petitioner Vinod and co-accused Subhash Chand, Shail Narang and Bhim Singh Rathi were joined in the investigation and they were enquired about the present case. The certified copy of GPA No 13907 dated 18.09 1996 was obtained from the office of Sub- Registrar-V, Kalkaji, Delhi and the report regarding verification of the same was obtained from Kadipur Tehsil, Gurugram The relevant sale deeds produced by the complainant were taken into police possession.

5. That thereafter, the investigation was conducted by the SIT constituted by the senior officers. The bank account statements of the petitioner Vinod and co-accused Subhash Chand, Shail Narang and Bhim Singh Rathi were obtained from the concerned banks The complainant as well as the accused party were joined in the investigation and they were enquired about the present case. The relevant record regarding GPA No. 13907 dated 18.09 1996 was obtained from Sub-Registrar-V Delhi The said GPA contains the photographs of the complainant Puran Manchanda, his wife Pratibha Manchanda and accused Subhash Chand. The verification regarding Sandeep Advocate (shown as witness in the GPA) was made from the Bar Council of Delhi, however, no such Advocate was found in the Bar Council records. The verification regarding the second witness namely P.K. Mehra was made and it came forth that he had died in the year 2001. His death certificate was obtained.”

4. I have heard Mr. Vinod Ghai, Sr. counsel, State counsel as well as Mr. Rakesh Nehra Sr. Advocate appearing for the complainant, for considerable time.

5. Petitioner’s counsel argued that co-purchaser had filed a civil suit which is pending before the Civil Judge, Senior Division Gurugram and interim injunction of status quo was granted vide order dated 14.03.2022. He submits that after that, complainant had also filed a civil suit for declaration and permanent injunction and both these civil suits are at initial stage, as such matter is civil in nature and therefore the petitioner must be granted bail.

6. To this, Mr. Rakesh Nehra, Sr. counsel, strenuously opposed the contention, by saying that a frivolous civil suit was filed simply to give shape of an fraudulent transactions to a civil nature case and merely because civil suit has been filed, would not mean that the petitioner has not committed any offence.

7. I have analyzed arguments addressed on both sides and thus, given the nature of allegations and the evidence collected so far, I do not agree with the arguments addressed by petitioner’s counsel simply because civil suit is pending as such petitioner is entitled to bail on that ground. Rather because it is the complainant who has a prima facie case and even further analysis of the complaint, on the face of it is not only credible but also corroborated by evidence and to the contrary the case set up by the petitioner, is filled with fraudulent activities.

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8. Petitioner's next argument is that the petitioner was a bona fide purchaser and even one co-purchaser Bheem Singh Rathi had approached this Court by filing quashing petition i.e. CRM-M-12284-2022, in which this Court issued directions to Investigating Officer to consider documents of co-accused before submitting final report under Section 173 CrPC. In my opinion, simply because one of the co-accused has come up before this Court under Section 482 CrPC or even if hypothetically, petitioner had filed a similar petition and such filing does not make out a case for anticipatory bail, which has to be analysed on its own merits, as such this point of argument is meaningless.

9. Petitioner's third argument is that alleged registration was done in the office of Sub Registrar Kadipur, District Gurugram and got registered by Subhash Chand on the basis of forged and fabricated general power of attorney Vasika No.13907 dated 18.09.1996 alleged to be registered in the office of Sub Registrar-V, South East, Delhi. Petitioner has nothing to do with this as he is purchaser and duly paid sale consideration. Mr. Nehra submits that all this was done fraudulently and tempering was done in original GPA and it is a big scam and the value of land in question is not less than Rs.50 crores wherein the alleged sale deed had been shown to be executed fraudulently showing sale consideration of meager amount of Rs.6,60,62,500/- and sale deed was shaped and money was paid through post dated cheques which is mentioned in sale deeds. Subsequently money was routed and cheques were cleared and in fact the money did not changed hands. Mr. Nehra further submits that the petitioner is one of the Principal accused and he is neither entitled to anticipatory bail and not even to regular bail and trial should be expedited and justice be done to the complainant.

10. Police report filed by the State, clearly points out that tempering was done in GPA and sale deed was not nothing but a sham. Although in the sale deed, some cheques were shown to be given which were post dated, such transaction is possible only when there is very close relationship between the parties which is not in the present case. Furthermore, cheques were presented later on and there is an evidence of routing of the money which points out towards sham transaction.

11. An analysis of the evidence collected so far clearly points out that petitioner is one of the main accused and he tried to cheat complainant's massive property by tempering with the documents and he is not entitled to any bail. This Court agrees with the contention of the Assistant Commissioner of Police made in para 12 of the reply that custodial interrogation is required for recovery the original copy of vasika number 11493 for obtaining details for money laundering and modus operandi and involvement of other person(s). Thus, in the entirety of facts and circumstances of the case, petitioner is not entitled to any anticipatory bail under Section 438 CrPC.

12. In State of Gujarat v. Mohanlal Jitamalji Porwal (1987) 2 SCC 364, Supreme Court holds,

[5].The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

13. In State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187, Supreme Court holds,

[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 ensconced with a favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he 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 task of disinterring offences would not conduct themselves as offenders.

14. In Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

15. In Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, Supreme Court holds,

[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

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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.

16. In P. Chidambaram v. Directorate of Enforcement, 2019 9 SCC 24, Supreme Court holds,

[70]. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C., 1973 is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

17. In Central Bureau of Investigation v. Santosh Karnani, Cr.A 1148 of 2023, dated 17-04- 2023, Supreme Court, in an FIR registered under sections under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988, holds,

[24]. The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.

[31]. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew

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that drops from thence, Hath infected some chairs and stools of authority.” Hence, the need to be extra conscious.

18. In the background of the allegations and the light of the judicial precedents mentioned above in the facts and circumstances peculiar to this case, the petitioner fails to make a case for anticipatory bail.

19. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed. Interim orders, stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

04.12.2023

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Whether speaking/reasoned: Yes

Whether reportable: No.