

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

208

CRM-M-58232-2022(O&M)

Date of decision: 11.09.2023

Dilbagh Rai Dhingra

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Gautam Dutt, Advocate, for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

Mr. Pawan Malik, Advocate, for the complainant.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.562, dated 28.11.2022 under Section 420 IPC (Sections 467, 468, 471 and 120-B IPC added subsequently) at Police Station Model Town, Rewari.

2. The facts as narrated in the FIR are that, the father of the complainant and of the petitioner herein, namely Kishan Lal and Mohan Lal respectively, owned ½ share each of a shop No.3 in New Sabzi Mandi. After verifying all the documents, the Market Committee, Rewari entered their names on Plot No.3 vide Rapat No. 1174, on 21.08.1980. The complainant and his family though were initially unaware of this fact, were informed that the half share of the plot belonged to their father, since deceased and obtained the certified copies from the Secretary E.O. Market Committee, Rewari. Complainant came to know that on 05.11.2003, a forged indemnity bond was submitted by the petitioner and other

co-accused stating therein that, Kishan Lal had died way back, and he did not have any legal heirs, thus the allotment of the shop be changed to their name. In furtherance to the same, 4 affidavits, purported to be signed by the complainant and other legal heirs of the deceased dated 20.11.2013, had been submitted by the petitioner and co-accused seeking transfer of the property in their name and not even 17 days later, the completion certificate of shop No.3 was issued by the Committee. Another co-accused, who was a Municipal Councilor, in conspiracy with others had also executed his own affidavit, with the object of depriving the present complainant of his right over the property.

3. Learned counsel the petitioner submits that it is a case of civil nature, as the father of the complainant and father of the petitioner were in joint possession of a shop (half share each) situated in New Sabzi Mandi. After the death of the father of the complainant, after no objection, the said shop was transferred in favour of the firm of the petitioner. The present FIR was registered only with a motive to extort money from him and thus, he has been falsely implicated. No allegation of cheating is made out against the petitioner as the father of the complainant himself had relinquished his share in favour of the petitioner. The petitioner is ready and willing to join the investigation and cooperate with.

4. Learned State counsel assisted by counsel for the complainant submits that the complainant was beaten despite he having agreed to settle the matter before the Mediation and Conciliation Centre. However, the same could not be settled as shop in question was not being handed over. During pendency of these proceedings, the son of the petitioner has attacked on the complainant and inflicted injuries regarding which FIR No.64, dated 08.03.2023 registered under Sections 195-A, 323, 34 and 506 IPC at Police Station Rewari City, District

Rewari against him. Medical record of the complainant has also been annexed along with photographs showing the injuries caused on hand, legs and head. The investigation is going on. The custodial interrogation of the petitioner is necessary to recover the forged documents and find out the truth. There is every apprehension to influence the investigation, influence the witnesses and cause threat to the complainant. Thus, they pray for the dismissal of the present petition.

5. Heard.

6. Hon'ble The Supreme Court in the case of **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, has observed that, "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

7. This Court vide order dated 19.12.2022, had stayed the arrest of the petition for facilitating the mediation proceedings, on the submissions made by learned counsel for the parties that their respective clients were willing to explore the possibility of compromise and the case was adjourned to 22.02.2023, on which

date, learned counsel on instructions from the petitioner, who was present in Court, expressed his readiness and willingness to hand over the possession of half of the shop in dispute and sought time to prepare documents with regard thereto, the case was adjourned to 16.03.2023. However, on 08.03.2023, the son of the petitioner alongwith other persons physically assaulted the complainant with sticks after calling him out of his house and fled while threatening to kill him, if he does not take back FIR, when the neighbours had started to gather. The complainant received injuries on the legs, heads and other parts of the body, for which an FIR under Sections 195A, 323, 34, 506, 325 was registered on the same date. The anticipatory bail filed by the son of the petitioner in the said FIR has been dismissed by the Additional Sessions Judge, Rewari, vide order dated 17.03.2023.

8. The MLR has been also placed on record as **Annexure R2/3**, as per which there are five injuries on the person of the complainant including a lacerated wound of size 2X 0.5X 0.5 cm over Central Parietal region of scalp, advise X-ray and Surgeon opinion. Photographs of the injured-complainant were also placed on record as **Annexure R2/2**.

9. The allegations against the petitioner in the FIR being of having forged documents to usurp the property, which was in his name of the father of the complainant and based on which they sought allocation of a shop at New Vegetable Market Bithwana. The subsequent conduct of the complainant having been caused injuries by the son of the petitioner during pendency of the present petition, wherein on one hand, the intention of the petitioner was being shown to settle the matter, whereupon arrest of the petitioner was stayed and before the next date, the aforesaid incident took place. The custodial interrogation is stated to be required and there is apprehension of the petitioner threatening the complainant and other witnesses as also tampering with the evidence and also to elicit

information as regards involvement of other persons, including the Municipal Councillor, who had allegedly conspired with him, and may have been instrumental in authenticating the alleged forged documents and entries that are stated to have been made in the revenue record.

10. In **State represented by the C.B.I. vs. Anil Sharma**, 1997(4) R.C.R.(Criminal) 268, Hon'ble The Supreme Court had observed that in cases where serious allegations have been alleged and the truth needs to be elicited from the accused, the same can only be done through the custodial interrogation as compared to questioning a suspect, who is already on anticipatory bail.

11. Hon'ble The Supreme Court in **CBI vs. Santosh Karnani**, (2023) SCC Online SC 427, **Sadhna Chaudhary vs. State of Rajasthan**, (2022) SCC OnLine SC 869, **Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal and Ors.**, 2020 SCC Online SC 1089, while expounding the law on anticipatory bail relied on **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, which after due deliberation on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 held thus:

- “i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.

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12. It is manifestly clear that anticipatory bail is not a right that may be granted indiscriminately. The Court must meticulously assess all the facts and circumstances and only after its utmost satisfaction, bestow the same in

extraordinary circumstances, where all the factors and parameters are met and there is no likelihood of him obstructing the path of justice.

13. The foregoing facts and circumstances reveal that the element of criminality cannot be ruled out, and couching the petitioner in a comparative safety of pre-arrest bail will hamper the thorough investigation of the case as it may leave many loose ends and gaps as also there is an apprehension of him influencing and threatening the witnesses and tampering with the evidence, which has been amplified by the conduct as referred to above. Thus, the present case when viewed in the light of the afore-referred judgments, this Court finds the petitioner to be not entitled to grant of concession of anticipatory bail. Resultantly, the present petition is dismissed.

14. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner are to be construed as an expression of opinion on the merits of the case.

11.09.2023

Ankur

(AMAN CHAUDHARY)

JUDGE

Whether speaking/reasoned :

Yes / No

Whether reportable :

Yes / No