

CRM-M-4201-2024 (O & M)
(205)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4201-2024 (O & M)
Date of decision:01.03.2024

Rajinder Singh Petitioner
V/s

The State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Dhruv Gupta, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

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.159 dated 31.03.2023 under Sections 406/420 IPC (467/468/471/120-B IPC added later on) registered at Police Station Krishna Gate Thanesar, District Kurukshetra.

2. The brief facts of the case are that as per allegations, the accused agreed to sell the multiple plots to the complainant and his family members, received a huge amount of money but later on it transpired that the accused were not the owners of the land/plots which they agreed to sell.

3. During the course of investigation, Gurmeet Singh son of Rajinder Singh (petitioner) was arrested on 14.08.2023. On 15.08.2023, he confessed to have committed the offence. He, thereafter, led the investigating agency to the house of one Daljit Singh son of Dharam Singh and got recovered Rs.3,50,000/- from him stating that the said amount was

CRM-M-4201-2024 (O & M)
(205)

::2::

deposited in the account of Daljit Singh from the amount which had been cheated.

During the course of investigation, the copies of the agreements to sell executed between the accused and the complainant were recovered.

4. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. No offence under Sections 406/420 IPC was made out. The complainant himself is a property dealer and it did not stand to reason that he could have been misled. Therefore, the prosecution version was highly improbable. As per the police investigation, it was co-accused Gurmeet Singh son of the petitioner who had conspired with MC Naresh Kumar and had shown his father (petitioner) as the owner of the land from which the plots were to be carved out. Jasvinder Kaur, the wife of the petitioner had been granted the concession of interim anticipatory bail by the Hon'ble Supreme Court vide order dated 15.12.2023 passed in Special Leave to Appeal (Crl.) No.16119/2023 (Annexure P-3) and Balwinder Kaur @ Rani, the daughter-in-law of the petitioner had been granted the concession of anticipatory bail by this Court vide order dated 10.10.2023 passed in CRM-M-51364-2023 (Annexure P-4). As Gurmeet Singh was the main accused and the petitioner was ready and willing to join investigation, he was entitled to the concession of anticipatory bail.

5. The learned counsel for the State, on the other hand, has filed a reply dated 27.02.2024 which is taken on record. While referring to the said reply, he contends that all the accused including the petitioner cheated the complainant and his family members on the pretext of providing them plots.

However, the land from which the plots were to be carved out were not in

CRM-M-4201-2024 (O & M)
(205)

::3::

the ownership of the petitioner and his family members as per the agreements to sell (Annexures R-1 to R-8). The petitioner-Rajinder Singh had agreed to sell the land and his son Gurmeet Singh was a witness to these agreements. Therefore, the petitioner was undoubtedly the main accused. Further, he had attempted to shift his liability upon his son-Gurmeet Singh whereas Gurmeet Singh in his petition (CRM-M-9677-2024) for the grant of bail has stated that it was his father-Rajinder Singh who was the main accused. Be that as it may, as the offence was *prima facie* established and the investigation was to be taken to its logical conclusion, the custodial interrogation of the petitioner was certainly required and the case of his wife and his daughter-in-law was completely different from that of the petitioner.

6. I have heard the learned counsel for the parties.

7. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', 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

CRM-M-4201-2024 (O & M)
(205)

::4::

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.***

CRM-M-4201-2024 (O & M)
(205)

::5::

8. As per the prosecution case, the petitioner and his family members cheated the complainant and his family members of a huge amount of money on the pretext of selling them plots. A perusal of the agreements to sell would clearly establish that the petitioner himself had executed the same showing himself to be the owner. In the instant petition, he has attempted to shift blame onto his son-Gurmeet Singh and MC Naresh Kumar whereas in the case of Gurmeet Singh @ Raja, the attempt is to shift the blame on the present petitioner. The fact of the matter is that the petitioner executed the agreements to sell whereas his son was a witness to the said agreements. Further, he being the main accused, his case cannot be equated to that of his wife and daughter-in-law, both of whom have been granted the concession of interim anticipatory bail or anticipatory bail either by the Hon’ble Supreme Court or by this Court. As the offence stands *prima facie* established and the investigation is to be taken to its logical conclusion, the custodial interrogation of the petitioner is certainly required.

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

10. 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

March 01, 2024
sukhpreet

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