

CRM-M-4599-2024
Reserved on: 11.03.2024
Pronounced on: 21.03.2024

Shail Narang...Petitioner

Versus

State of Haryana...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Karan Pathak, Advocate
for the petitioner.

Mr. Naveen K. Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0113	16.03.2022	Badshahpur, District Gurugram	120-B, 406, 420, 467, 468, 471 IPC (Section 201 IPC & 7,8 & 13(1)(b) of PC Act 1988 added later on)

1. The petitioner, who is a woman aged 59 years, apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. Vide order dated 31.01.2024, petitioner was granted interim bail which is continuing till date.
3. Prosecution’s case is being taken from reply dated 13.02.2024, which reads as follows: -

“...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. Shail 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 registered a forged and fabricated sale deed 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 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. BasantRaghav 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 Rathicame to the halqapatwari 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 PuranManchanda further came to know that the said forged and fabricated sale deed 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 a 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 nor 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 i.e. 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 KadipurDistt- 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.

4. That thereafter, the investigation was conducted by the Economic Offence Wing-I, Gurugram. During investigation, the petitioner ShailNarangand co-accused Subhash Chand, Vinod 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 ShailNarangand co-accused Subhash Chand, Vinod 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.

6. That Smt. Pratibha Manchanda (wife of the complainant) was joined in the investigation of the present case. The information regarding non-entry of PAN numbers in vasika no. 11493 dated 24.02.2022 was obtained from Kadipur Tehsil. The "Bahi" of GPA No. 13907 dated 18.09.1996 and the "Bahi" of the previous and subsequent registries were inspected in the office of Sub-Registrar-V, Delhi and the record was found to be tampered. The same were sent to RFSL Bhondside RC No. 931 dated 21.09.2023 for obtaining the expert opinion. The report of RFSL has been received and the same is attached herewith as Annexure R-1.

7. That the accused Subhash Chand and Tony Yadav were arrested on 19.09.2023. Another accused Sanjay Goswami was arrested on 20.09.2023. Accused Bhim Singh was arrested on 26.09.2023. Their disclosure statements were recorded. The involvement of ASI Pradeep Kumar was also found in the present matter as he was

found to have received illegal gratification. Sections 7, 8 & 13(1)(b) of PC Act and 201 IPC were added in the present case. The specimen signatures of accused Tony Yadav were sent to RFSL Bhondsi. The report of RFSL has been received.”

4. I have heard counsel for the parties and gone through the pleadings.

5. Mr. R.S. Rai's primary argument is that in the report given by the Senior Scientific Officer (Docs)-RFSL Bhondsi, Gurugram, it has been observed that possibility that the person who wrote red enclosed standard signatures stamped and marked A1 to A4 also wrote the red enclosed questioned photostat signatures similarly stamped and marked Q1 to Q4, cannot be ruled out. Based on this, counsel submits that the very allegation that power of attorney was forged is not proved to be truthful, and the entire case has to fall on this ground alone.

6. On the contrary, the state counsel, by referring to paragraph 6 of the reply, stated that the investigator had evaluated the *Bahi* of GPA, and the record was found to be tampered with. After that, the relevant record was sent to RFSL. State counsel further submitted that the report "the possibility cannot be ruled out" would not establish that the tampering did not happen, and it only shows that the tampering was done meticulously, by some expert, and they need custodial interrogation to get a clue and to do justice to the victim. The state further submitted that the petitioner is not entitled to bail on this ground because of the tampering of the documents and her participation in the conspiracy by handing over post-dated cheques to allegedly fraudulent sellers.

7. An analysis of the above evidence does point out that the expert who examined the handwriting could not say with certainty about the author of the documents. Given the severe nature of the allegations, further investigation is required even in this regard, and further investigation also has to be carried out despite knowledge of the absence of tampering or the tampering with the connivance of the complainant and her accomplices then undoubtedly the investigator/concerned SP shall initiate an action against the complainant and co-conspirators for presenting a false complaint. However, this report is only a secondary and corroborative piece of evidence, and the primary evidence is the statement of the complainant where they have explicitly denied execution of such power of attorney. In addition, there was no payment of TDS or mention of a PAN card, and the Advocate, who was shown as the signatory, was not found to exist. As such, the petitioner is not entitled to bail on this ground.

8. Petitioner's counsel's following argument is that their civil suit is pending, which would benefit the petitioner. State opposes such plea by referring to the judgment

passed in Criminal Appeal No.1793 of 2023 by the Hon'ble Supreme Court of India in Pratibha Manchanda and another vs. State of Haryana and another, in which the complainant-Pratibha Manchanda had challenged the grant of bail given by this Court to one of the co-accused and Hon'ble Supreme Court of India had allowed the said appeal and set aside the order of grant of bail. While setting aside the bail order, the Hon'ble Supreme Court, in a very detailed order addressed every aspect of the matter and also clarified in para Nos.32 & 33 of the above-mentioned judgment, which reads as follows:-

"[32]. In case the vendees, the officers/officials of the Registering Authority have secured anticipatory bail from Sessions Court/High Court, the SIT shall be at liberty to seek suitable modifications to such orders so that no impediment is caused in carrying out a fair and free investigation. [33]. No interlocutory/interim order passed by the Civil Court shall obstruct the ongoing investigation. The Civil Court shall not, from this point forth, pass any such order in pending civil suits which may hamper the ongoing investigation."

9. Given the above, the petitioner's argument cannot be accepted. Further, the concerned Superintendent of Police is to ensure that the above-said order passed by the Hon'ble Supreme Court has been complied with in letter and spirit, and if the order is not complied with, then the file be forwarded to the DGP, Haryana, for further strict action for non-compliance, if any.

10. The petitioner's counsel argued that after the execution of the sale deed, the complainant, with an ulterior motive, started pressurizing the sellers as well as the petitioner and co-purchasers and blackmailing them with the help of local police, and because of that, the petitioner, along with co-purchasers, had filed a Civil Suit for a permanent injunction. Sr. Counsel further referred to para 12 of the petition and argued that the complainant has never questioned or canceled the registered GPA for the last 26 years, and two further cross-cases were filed. Mr. Rai, based on para 15 of the petition, submits that the petitioner is a bonafide purchaser and, along with co-purchasers, had purchased the land from Subhash Chand, who was a GPA holder of the original owners of the land and took all the precautions while purchasing the land and original owners had relinquished all crucial rights about the land in question and now they cannot be held responsible. The following argument on behalf of the petitioner is that the allegation that the value of the land measuring fifteen kanals two marlas is Rs. fifty crores is misconceived because the sale consideration was Rs.6,60,62,500/-. Mr. Rai referred to para 19 of the petition and submitted that the complainant and his wife had subsequently executed a sale deed of 16 kanals 12 marlas on 23.01.2023 situated in village Begampur Khatola in favor of M/s Upkeepers App Pvt. Ltd. for a sum of

Rs.7,49,07,520/-, which shows the rate of agricultural land, in the area, as such value of the land was not Rs.50 crores.

11. Counsel for the State submitted that he needs to find out whether the registration authorities had looked into the matter for concealment of the registration fee by not disclosing the circle rate, which will lead to an altogether separate offence, but, be that as it may, on this ground the petitioner is not entitled to bail.

12. An analysis of this argument would reveal that even if Mr. Rai's arguments are accepted, the petitioner is not entitled to bail simply because the complainant claims to value their property for Rs.50 crores instead of a sale consideration of Rs.6,60,62,500/-. The complainant's primary allegation is that the GPA was forged, the sale deed was a *sham*, and the petitioner was part of a conspiracy because postdated cheques were issued, which were never done in land sale deeds.

13. State counsel has further referred to para 13 of the reply, which reads as follows: -

“That the role of the petitioner Shail Narang in the present case is that she has been involved in the entire conspiracy from the very beginning. In pursuance of the conspiracy, the petitioner got registered the sale deed of 07 kanals land of the complainant on the basis of fake GPA. In the said sale deed, the petitioner had shown six PDC cheques of Rs.3,06,25,000/-. The amount of Rs.1,51,25,000/- has been found to be transferred in the personal account of the petitioner from the account of accused Bhim Singh Rath, Rs.12,50,000/- has been found to be transferred from the account of accused Vinod Rs.24,60,000/- has been found to be transferred from the account of accused Tony Yadav, Rs.76,77,000/- has been found to be transferred from the account of accused KNSM Capital (firm of Kamalnath, son of accused Subhash Chand) and Rs.30,00,000/- has been found to be transferred from the account of Aman Transport (firm of accused Om Bhati). In this way, the PDC cheques were found to be got cleared by the petitioner Shail Narang and co-accused Subhash Chand, Vinod, Bhim Singh Rath and M/s Aman Transport (proprietor Ombir Bhati) by transferring the same money in the accounts.”

14. An analysis of the above arguments would point out the conspiracy and involvement of the petitioner with the co-accused, whose bail was dismissed.

15. Another factor that points out towards conspiracy is that unless the sale deed or the land transfer takes place between close friends, relatives, family members, or where there is an established relationship of trust, it is highly un-usual for the seller to execute the sale deed based on postdated cheques. In the present case, it is crystal clear that

the cheques were given to the seller because the seller had no interest in the land and nothing to lose and because both the seller and purchasers were hand-in-glove. The allegations are heinous, and the crime is serious.

16. The petitioner also seeks bail on the ground that she is a woman, and there is a special provision for bail to a woman. The state opposes such prayer on the ground that it is not the right of a woman to get bail, but it is one of the factors that the petitioner had actively conspired with all the other accused, and she is not entitled to such discretion. An analysis of the argument mentioned above would also point out that the petitioner is not entitled to bail because she is a woman and given the severe nature of the allegations, the massive amount of money involved, and dubious means by which post-dated cheques were used in the transactions which point towards shrewdness in the manner of execution of this entire criminal plan.

17. In *Sumitha Pradeep v Arun Kumar CK*, 2022 SCC OnLine SC 1529, Supreme Court holds,

[16]. ... 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 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 anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

18. In *State of Gujarat v. Mohanlal Jitmalji 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....."

19. 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 ensconded 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 insulted 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.

20. InJai 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].

21. 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 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.

22. 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.

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

24. 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.

25. 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

21.03.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: YES.