2024:PHHC:093014

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

**CRM-M-10372-2023 (O&M)**
**Date of Decision: 25.07.2024**
**Reserved on: 04.07.2024**

**Dr. Jinesh Jain** ... **Petitioner**

**Versus**

**State of Punjab and others** ... **Respondents**

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Piyush Aggarwal, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

Mr. Sanjeev Sahey, Advocate (Through Video Conference)
with Ms. Meenakshi Dogra, Advocate,
for respondents No.2 and 3.

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**MANISHA BATRA, J.**

1. The instant petition has been filed under Section 439(2) of Cr.P.C. by the petitioner, who is complainant in case arising out of FIR No.221 dated 23.08.2022 registered under Sections 420, 465, 467, 468, 471 and 120-B of IPC at Police Station Division 6, Police Commissionerate, Ludhiana, making prayer for cancellation of benefit of pre-arrest bail as granted to respondents No. 2 and 3 by the Court of learned Additional Sessions Judge, Ludhiana vide order dated 28.09.2022.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was lodged as against the respondents No.2 and 3, who are brother and nephew

respectively of the present petitioner on the complaint of the petitioner alleging therein that he was running a firm under the name and style of M/s Jainson Mechanical Work at Ludhiana. His father Sh. Satpal Jain had 25% share in this firm out of which during his lifetime, he had relinquished 10% share to him, 10% share to the respondent No.2 and had kept the remaining 5% share with himself. After the death of his father on 06.02.2019, the respondent No.2 and himself had divided the abovesaid 5% share amongst themselves and all types of land, estate, machinery, capital, cash and bank balance pertaining to the firm as per the share of his father, had come to them in equal share. He alleged that on 12.03.2019, with intention to cheat him and the other partners of the above firm, the respondent No.2 by signing a cheque of the firm as authorized signatory, got withdrawn an amount of Rs.21,71,174/- from the account of the firm in favour of his late father and deposited the said amount in the saving bank account which was in the name of his father. He further got the abovesaid amount cleared without the knowledge of the petitioner and other partners and then the said amount was got transferred in the name of respondent No.3.

3. As per further allegations, respondent No. 2 also got the saving bank account in the name of his father transferred in the name of his son by colluding with the bank manager with an intention to usurp the amount of Rs.57 lacs which was lying deposited in the said account and by doing so, he deprived the petitioner and his sister Aruna Jain who were otherwise entitled to have the aforementioned amounts to the extent of equal shares and in this manner, he cheated them. The petitioner also came to know that by playing fraud, the respondent No.2 had got himself nominated qua three policies under the UTI Mutual Fund Fixed Maturity Plan which was in the name of his father and in one of each of which his sister and himself had been nominated. That

apart, gold ornaments and silver articles belonging to his father were also in exclusive possession of respondent No.2. He had even taken loan of a sum of Rs.33 lacs from his father which was not returned. Apart from usurping money lying deposited in the name of his father in other firms, he had got prepared a forged document claiming the same to have been executed by his father and in this manner, he had been depriving the petitioner and other legal heirs of his father from inheriting their shares in the properties left by him.

4. As alleged further, after registration of FIR, investigation proceedings were initiated. The respondent No.2 and 3 moved an application for grant of pre-arrest bail before the Court of learned Additional Sessions Judge and vide order dated 28.09.2022, they had been extended benefit of the same.

5. It is submitted in the petition and it has been argued by learned counsel for the petitioner that the impugned order dated 28.09.2022 is liable to be set aside as while passing the same, the learned Additional Sessions Judge did not apply his judicious mind and acted in a very casual manner. It was wrongly observed that since a probate case was pending and the Will was in custody of the Court in the file of the probate case, therefore, the custodial interrogation of the petitioner would not serve any purpose. Learned Court overlooked the other serious allegations as levelled in the FIR as against respondent Nos. 2 and 3. The documents relied upon by the complainant were showing on the face of record that the respondent No.2 in collusion with respondent No.3 had fabricated and forged a Will to misappropriate the funds managed by his father in authorized bank account and had converted the same to their personal use by embezzling the same. He further argued that the transaction of transfer of an amount of Rs.21,71,174/- by the respondent No.2

from the bank account of the firm in the personal saving bank account maintained by his father and then transfer of the same in the name of his son was clearly reflective of the intention of the respondent No.2 to deceive other legal representatives of his deceased father including himself. Huge amount of money was usurped by respondents No.2 and 3 in connivance with each other by getting the names of nominees transferred in their favour. In this manner, they had not only committed the offence of cheating but forgery also. However, the learned trial Court while allowing the application for grant of anticipatory bail did not take all these facts into consideration and committed a grave error. With these broad submissions, it is argued that the petition deserves to be allowed, the impugned order is liable to be dismissed and the benefit of pre-arrest bail as granted to respondent No.2 and 3 is liable to be cancelled.

6. Status report has been filed by the respondent No.1 mentioning therein that after conducting inquiry into the matter, FIR was registered against the respondents No. 2 and 3 who had applied for grant of anticipatory bail. Though they had joined investigation but did not get effected recovery of forged and fabricated documents as well as the money which had been illegally withdrawn by them from the bank. It is also submitted that the custodial interrogation of respondents No.2 and 3 is required for recovery of money and forged documents and, therefore, learned State counsel has argued that in view of these facts and circumstances, the respondent-State has no objection, if the petition is allowed.

7. Reply has also been filed by respondent No.2 submitting therein that the petitioner had got separated from his father way back in the year 2010 after getting share of property and ever since then his father had been living

with him and it is he who took care of his father till his last breath. In his life time, his father had written a holographic will on 03.04.2018 in favour of his family members as well as himself and after the death of his father, he had filed a petition which was pending before the Court of Civil Judge, Ludhiana for grant of probate on the basis of the Will of his father and on coming to know about the said fact, the petitioner had falsely implicated them in this case. It is denied that the Will in question is a forged Will and that the amount of Rs.20,71,174/- was wrongly transferred from the bank account of his father and it is submitted that in fact it was a joint account in the name of his son as well as his father from which the amount was transferred and the same could be validly transferred. It has also been submitted that the respondents No.2 and 3 had joined the investigation. No recovery was required to be effected from them. Their custodial interrogation was not required. No condition of the grant of bail has been violated by the respondents No.2 and 3. Therefore, it is argued that there is no merit in the petition and the same is liable to be dismissed.

8. Learned counsel for the parties were heard at considerable length.

9. Before delving into the contentions as raised by learned counsel for the parties, I consider it necessary to discuss certain principles which govern the cancellation of bail as enunciated by Hon'ble Supreme Court in various pronouncements. Reference can firstly be made to **Myakala Dharmarajam vs. the State of Telangana,** (2020) 2 SCC 743, wherein it was observed that an order for cancellation of bail can be made only where such order suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or

the Sessions Court would be justified in cancelling the bail. Reliance can further be placed upon **Sushila Aggarwal v. State (NCT of Delhi)**, (2020) 5 SCC 1, wherein it was observed that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses) or likelihood of his absconding. It was also observed that whether to grant bail or not is a matter of discretion of the Court. Similar position of law had been laid down in **Dolat Ram and others vs. State of Haryana,** 1995 SCC (1) 349.

10. In view of the proposition of law as laid down in the above discussed authorities, it is clear that the discretion under Section 439(2) Cr.P.C. is to be exercised only if it is proved that bail has been granted to an accused of a heinous crime in a manner, which smacks of arbitrariness, capriciousness or perversity and on being satisfied on the basis of material placed on record that the accused has actually misused such liberty. The petitioner in this case has sought cancellation of bail of respondent No. 2 and 3 on the ground that the allegations against them are serious in nature and further that they have misused the liberty of bail so granted. So far as the gravity of the nature of allegations against them is concerned, the trial Court while deciding the prayer of the respondents No.2 and 3 for grant of pre-arrest bail is shown to have taken into consideration the contentions raised by the parties. It is shown to have observed that the original Will which is also subject of dispute between the parties is in the custody of the Court before which the petition for grant of probate is pending. The respondents No.2 and 3 are alleged to have withdrawn money from the bank accounts or other investments made by deceased father of the petitioner, in which, the petitioner and his sister

were also having equal share. They are also alleged to have taken loan in the name of deceased father of the petitioner. Not only this, respondent No. 2 forged a Will purporting the same to have been written by his father to support his claim. These allegations have already been taken into consideration by learned Additional Sessions Judge while granting benefit of pre-arrest bail to respondent Nos. 2 and 3. It is not the version of the petitioner that respondent No. 2 and 3 are either influencing the course of investigation, or tampering with evidence (including intimidating witnesses) or there is likelihood of their absconding from the process of law. Petitioner and respondent No. 2 are admittedly real brothers and the dispute between them is with regard to partition of properties of their deceased father. More so, when the civil dispute is pending between the parties in the form of a probate petition with regard to *inter se* dispute, the custodial interrogation of respondents No. 2 and 3 cannot be said to be required. Therefore, in view of the discussion as made above, no case has been made out to cancel the benefit of pre-arrest bail granted to respondents No. 2 and 3. Hence, this petition is dismissed.

**(MANISHA BATRA)**
**JUDGE**

**25.07.2024**
manju/waseem

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