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

205 **CRM-M-19521-2024**
Date of decision: 19th September, 2024

Varinder Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

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

Mr. A.S. Samra, AAG, Punjab.

Mr. Vikas Bali, Advocate for the complainant.

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MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 438 of Cr.P.C. seeking anticipatory bail in the FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
17	02.04.2024	PS NRI, District Police Commissionerate, Ludhiana	420, 467, 468, 342 and 471 of IPC, 1860

2. As per the prosecution case, a complaint was lodged by the complainant Davinder Kumar alleging therein that he was settled at United Kingdom. He owned a shop-cum-office(SCO) bearing No. 39 situated at Sector 32-A, Ludhiana, Punjab. Previously, he had executed a power of

attorney in favour of his younger brother Varinder Kumar i.e. the present petitioner on 01.04.2002. The said power of attorney had been revoked by virtue of another power of attorney which was got registered by the complainant on 05.12.2020 in the office of Sub Registrar, Ludhiana. Even the said power of attorney had also been revoked subsequently. Recently, he came to know that by using the previous power of attorney as executed by him, the petitioner had sold his property bearing SCO No. 39 to someone else without his consent or approval. Upon sale of the above said property, the petitioner had transferred an amount of money which was equivalent to the sale value shown in the registered sale deed but was not the actual and complete sale amount as per the market value of the property which was much more. He alleged that the petitioner deceived him by taking the profit from the sale property and misappropriating the same and transferring only meager amount of money in his bank account. Previously also the petitioner had been cheating him by misusing his power of attorney in order to sell his other properties. It was also alleged that the power of attorney dated 01.04.2002 was executed for pertaining to the property situated at Kurukshetra, however, the property situated at Ludhiana which was of significantly higher value was sold on the basis of the same. As such, he prayed for taking penal action against the petitioner.

3. As per the allegations, on receipt of the complaint, inquiry was conducted in the matter. It was revealed that SCO No. 39 was purchased by the complainant from GLADA in the year 2004 and construction was raised

thereon. The abutting property bearing SCO No. 38 was purchased by another brother of the petitioner namely Yograj and on asking of the petitioner, a restaurant was opened by joining both SCOs 38 and 39. As on 09.12.2020, on asking of the petitioner, the complainant had executed a general power of attorney in favour of the petitioner for taking care of his property. Subsequently, as the complainant needed money, he had asked the petitioner to sell the property bearing SCO No. 39. The petitioner had represented to the complainant that an agreement to sell was executed for sale of that property though infact the agreement was executed for sale of that property for a sum of Rupees eight crore but only a paltry amount of Rs. 60,62,500/- was deposited in his bank account and the remaining amount was usurped by the petitioner and converted to his own use. After registration of FIR against the petitioner, investigation is underway. Apprehending his arrest, present petitioner had moved an application for grant of pre-arrest bail before the Additional Sessions Judge, Ludhiana which was dismissed vide order dated 15.04.2024.

4. Vide order dated 24.04.2024, the arrest of the petitioner had been ordered to be stayed.

5. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. He is a sixty-six years old person suffering from several ailments. The allegations levelled against him that he had sold property bearing SCO No. 39 at higher rate and had given lesser sale consideration amount to the complainant are false on the face of record.

During inquiry, the vendee Vinod Jain had recorded a statement that an oral agreement qua purchase of the above stated property for a sum of Rs. 65,00,000/- had been executed between the petitioner and himself but the said deal had not been finalized. It is also submitted that the complainant has failed to produce any material on record to show that the property in question was sold for a sum of Rs. 8,00,00,000-10,00,00,000/- as claimed by the complainant. No document regarding cancellation of power of attorney dated 01.04.2002 has been produced on record. The power of attorney registered in favour of the petitioner on 09.12.2020 was cancelled only on 16.06.2023 i.e. after sale of SCO No. 39. The allegations levelled by the petitioner are limited to fraudulent use of power of attorney and recovery of balance sale amount. No material has been placed on record to show that the power of attorney as executed by the complainant on 01.04.2002 and even on 09.12.2020 had been revoked at any point of time before 16.06.2023, whereas the SCO No. 39 had been sold on 12.04.2023. The allegations that the petitioner had forged signatures of the complainant on some affidavit is only an afterthought on the part of the complainant with an intent to extort money from him. He is ready to join the investigation. Investigation is underway. No recovery is to be effected from him. His custodial interrogation is not required. Therefore, it is urged that the petitioner deserves to be allowed.

6. *Per contra*, learned State counsel assisted by learned counsel for the complainant has argued in terms of the status report, that petitioner

had entered into an agreement to sell SCO No. 39 to one Vinod Jain for a sum of Rs. 8,00,000,00/- and had deposited an amount of Rs. 60,62,500/- in the joint account of the complainant and himself. On demand of the complainant, he had deposited a sum of Rs. 80,00,000/- in his bank account. The SCO No. 39 was not sold to Vinod Jain rather it was transferred in the names of Sanjit Kaur, Inderjit Kaur, Charanjit Singh and Kamalpreet Singh, vide a registered sale deed dated 12.04.2023. It is submitted that the petitioner had prepared fake affidavits of complainant and his brother Yograj qua SCO No. 38-39 respectively and on the basis of the same, had got made entries in the record of GLADA in the names of the complainant and his brother Yograj, thereby committing offence of forgery. He had also sold SCO No. 39 to above named Sanjit Kaur, Inderjit Kaur, Charanjit Singh and Kamalpreet Singh, on the basis of a power of attorney which was given in the year 2002 and had been revoked. His custodial interrogation is required for conducting thorough investigation in the matter. No extra ordinary or sparing circumstance has even otherwise been made out for extending benefit of bail to the petitioner. The allegations against the petitioner are serious in nature and make out a *prima facie* case for commission of offences of cheating, forgery and use of forged documents. Therefore, it is argued that the petition does not deserve to be allowed.

7. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

8. The petitioner is alleged to have forged signatures of the complainant and his brother Yograj on some affidavits on 25.03.2009 to be kept on record of GLADA qua ownership of SCO No. 38 and 39. The inquiry has revealed that the complainant was in United Kingdom at that time and was not in India. As per the further allegations, the petitioner sold the property belonging to the complainant i.e. SCO No. 39 for a huge amount of Rs. 8,00,000,00/- but the entire sale consideration had not been paid to the complainant. Though it is a question of debate as to whether any offence of forgery is made out but the allegations levelled against the petitioner *prima facie* make out a case of cheating. For conducting thorough investigation in the matter, in the opinion of this Court, the custodial interrogation of the petitioner is required. It is well settled proposition of law that while deciding the application for grant of anticipatory bail, the Court should consider the nature and gravity of the accusation, the severity of the punishment in the event of conviction, reasonable apprehension of the witness being influenced, danger of the accused absconding or fleeing and danger of justice being thwarted by grant of bail. It is equally settled that custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order of anticipatory bail. Many useful information can be disinterred during custodial interrogation. It is also a matter of discretion to grant or not to grant pre-arrest bail. On considering the nature of allegations as levelled against the petitioner, I am of the considered opinion that custodial

interrogation of the petitioner is required for conducting thorough investigation in the matter by the police. Moreso, no exceptional or extra ordinary circumstances for extending benefit of pre-arrest bail is made out in his favour. Hence, the petition stands dismissed.

9. It is, however, clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

10. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

19th September, 2024
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No