

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

**CRM-M-27848-2019 (O&M)
Date of decision : 22.04.2024**

Om Parkash and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sunil Chadha, Senior Advocate assisted by
Ms. Taanvi Dhull & Mr. Raghav Chadha, Advocates
for the petitioners.

Mr. Kiran Pal Singh, AAG, Haryana for the respondent.

Mr. Akshay Jindal, Advocate for the complainant.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail to the petitioners in FIR No.448 dated 30.05.2019, under Sections 406, 420 & 120-B of the Indian Penal Code, 1860, registered at Police Station Civil Lines, District Karnal.

(2) At the outset, learned Senior Counsel for the petitioners, on instructions, submits that petitioner No.2-Sushma Rani (wife of petitioner No.1-Om Parkash) is no more; hence, petition qua her is disposed off accordingly.

(3) Above FIR was registered on the basis of statement made by complainant-Anand Mohan with the allegations that petitioner No.1 received Rs.1.7 Crore for selling a piece of land to the complainant; but fraudulently, transferred the same in favour of his wife/co-accused-Sushma Rani (petitioner No.2).

(4) Learned Senior Counsel contends that petitioner No.1 was granted interim bail by this Court, vide order dated 11.12.2019 and in pursuance thereof, he has already joined investigation; thus, his custodial interrogation would not serve any purpose. Further contends that Civil Suit is also pending between the parties and in case, the *de facto* complainant succeeds before learned trial Court, then legal heirs of petitioner No.2-Sushma Rani (since deceased) shall have no objection in transferring the land back to the complainant. Also contended that on 19.04.2023, learned State Counsel upon instructions from ASI Kashmir Singh specifically stated that custodial interrogation of the petitioners is not required.

(5) Learned State Counsel, on instructions from quarter concerned, reiterated their stand dated 19.04.2023 and further submitted that Investigating Officer has collected the entire material in support of the prosecution case; hence, custodial interrogation of the petitioner is not required at this stage.

(6) *Per contra*, learned Counsel for the complainant vehemently opposed the prayer on the premise that there are serious allegations against petitioner No.1 inasmuch as he has committed a fraud while transferring the land in question in favour of his wife-co-accused (since deceased) and also

forged the documents in this regard; hence, his custodial interrogation is very much necessary.

(7) Heard learned Counsel for the parties and perused the paper-book.

(8) It is not in dispute that petitioner(s) were granted interim bail by the Co-ordinate Bench on 11.12.2019 and the order reads as under:-

“The petitioners are seeking anticipatory bail in FIR No.448 dated 30.05.2019, under Sections 406, 420 and 120-B IPC, registered at Police Station Karnal, Civil Lines, District Karnal.

Learned Senior counsel for the petitioners contends that the FIR is outcome of a purely civil dispute between petitioner No.1 and the complainant, who is his nephew. The allegations in the FIR are with regard to the agreement to sell dated 09.08.2011 and, therefore, there is a delay of 8 years in lodging the FIR. The complainant has also filed a civil suit with regard to the afore-noted agreement to sell.

Learned Senior counsel for the complainant states that no doubt agreement to sell was executed on 09.08.2011 but later on the dates had been extended upto 30.11.2016 and the petitioner No.1 had transferred the property in question in the name of petitioner No.2 on 19.09.2015. He also contends that the complainant is the nephew of the petitioners and the matter can be resolved through mediation.

Learned Senior counsel for the petitioner also contends that effort can be made to settle the matter through mediation.

The parties shall appear before the District Mediation and Conciliation Centre, Karnal on 16.12.2019 for exploring the possibility of amicable settlement and the Mediator shall send his/her report to this Court before the next date of hearing.

List before this Court on 30.01.2020.

In the meantime, the petitioners are directed to appear before the investigating/arresting officer and join investigation.

In the event of their arrest, the investigating/arresting officer shall release the petitioners on ad interim bail subject to his satisfaction. The petitioners shall also abide by the conditions as envisaged under Section 438 (2) Cr.P.C.”

(9) It is acknowledged by learned State Counsel on instructions that in pursuance of the aforesaid order, petitioner No.1 joined investigation and as on today, his custodial interrogation is not required. Learned State Counsel also apprised the Court that Investigating Officer has collected the relevant material in support of the prosecution case and report under Section 173 Cr.P.C. is likely to be presented shortly.

(10) Once, the Investigating Agency has come up with categorical stand that relevant material in support of the prosecution case has been collected and they are not asking for custodial interrogation of the petitioner; then in such a scenario, there would be no justification to deny the concession of pre-arrest bail, unless there are some compelling circumstances.

(11) Since civil suit is already pending between the parties, therefore, in the opinion of this Court, there would be no such exceptional circumstance to deny the concession of pre-arrest bail to the petitioner; hence, the objection raised on behalf of the *de facto*-complainant is hereby rejected. At the same time, it is observed here that petitioner No.1 shall be bound by the contention raised on his behalf to the effect that in case civil suit is decreed in favour of the *de facto*-complainant, then legal heirs of petitioner No.2-Sushma Rani shall transfer the land in his favour without raising any

objection in this regard and the contention so raised by learned Senior counsel shall be construed as an undertaking on behalf of petitioner No.1.

(12) In view of the above, present petition qua petitioner No.1-Om Parkash is allowed; interim order dated 11.12.2019 to that extent is made absolute subject to the conditions as envisaged under Section 438(2) Cr.P.C.

(13) However, it is made clear that petitioner No.1 shall fully co-operate with the Investigating Officer as and when called for further investigation.

(14) The above observations may not be construed as an expression of opinion on merits of the case in any manner; rather, confined only to decide the present bail matter.

(15) Also clarified that in case there is recurrence on the part of the petitioner No.1, State would be at liberty to move an appropriate application for recalling of this order.

(16) Pending application(s), if any, shall also stand disposed off.

22nd April, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes