

2024:PHHC:160357



IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

106

CRM-M-40942-2024
DECIDED ON: 23.08.2024

JAGDEV SINGH

... PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Atul Jain, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

Mr. Parvinder Singh Guliani, Advocate
for the complainant.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked for the grant of anticipatory bail to the petitioner in case FIR No. 91 dated 19.04.2024, Under Sections 406, 420, 467, 468, 471 and 120-B IPC, registered at Police Station Tripri, Patiala, District Patiala.
2. Learned counsel for the petitioner has submitted that the petitioner has not committed any offence and has been implicated falsely in the present case. The assertion is that no offence under Section 420 IPC has been made out against the petitioner as there is no allegation that the petitioner was, in any

manner, involved in an act of instigating, inducing or alluring the complainant or any other person to give money. It is further asserted that the dispute is purely of civil in nature, to which the complainant has given the colour of criminal offence, as the complainant has already instituted civil suit. Further assertion is that Ritik Bansal who had purchased a plot has filed a suit for partition. Till date the complainant has not filed any case for the cancellation of agreement to sale or sale deeds executed by her. In order to put pressure on the petitioner, a false and fabricated case has been registered against him and others. It is also worthwhile to mention here that the complainant has also filed a complaint under Section 138 of NI Act, against the petitioner. No recovery is to be effected from the petitioner, as the case is based upon documentary evidence.

2. On the other hand, learned State Counsel submits that the investigation of the case is still pending and custodial investigation/interrogation of the petitioner would be required to culminate the investigation into a logical end. Moreover, the allegation against the petitioner is with regard to duping of crores of rupees from the complainant. Accordingly, prayer for dismissal of the present petition has been made.

4. Heard learned counsel for the respective parties.

5. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

6. The case involves a complex web of land transactions, forgeries, and alleged cheating. Harinder Pal Kaur agreed to sell 5500 sq. yards of land to Jagtar Singh on 13.05.2018. Sale deeds were executed in favour of Jarnail Singh, Vishu, and Jagdev Singh, with possession delivered as per the site plan. Ritik Bansal purchased 250 sq. yards of land from Jarnail Singh and attempted to take forcible possession of the land owned by complainant. An inquiry report revealed that Jagdev Singh submitted forged agreements to sell land measuring 6200 sq. yards to the Municipal Corporation, Patiala, for regularization of the colony.

7. Hence, *prima-facie* offence under Section 420 IPC is made out against the petitioner. Such an allegation certainly requires adequate and intense investigation to unearth the truth. The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail because an element of cheating is involved in it. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

8. The Hon'ble Supreme Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870** held that merely because custodial interrogation is 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 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.”

9. More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in **“State vs. Anil Sharma”; (1997) 7 SCC 187**, held as under:-

“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 a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is 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 needs 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 a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

10 Considering the fact that the allegation against the petitioner is of serious nature wherein he submitted forged agreements to sell land measuring 6200 sq. yards to the Municipal Corporation, Patiala, for regularization of the colony.

11. Keeping in view the afore-said facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail.

Hence, the present petition is hereby, dismissed.

12. All other misc. application(s), if any, also stand(s) disposed of accordingly.

23.08.2024
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(SANDEEP MOUDGIL)
JUDGE

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