

CRM-M-43735-2023 (O & M)
(102)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43735-2023 (O & M)
Date of decision:20.03.2024

Sohan Singh Petitioner
V/s

State of Punjab ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Satnam Chauhan, Advocate,
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

Mr. Govind Tanwar, Advocate,
for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in this second petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.9 dated 08.01.2014 under Sections 406, 420 and 120-B IPC registered at Police Station City Kharar, SAS Nagar, Mohali.

2. The brief facts of the case are that one Iqbal Singh filed complaints dated 01.09.2011 and 29.09.2011 to the police which on an enquiry culminated into the instant FIR and reads as under:-

“To the Hon'ble S.S.P. Sahib, SAS Nagar, Mohali, Subject, Complaint for taking action against Sohan Singh S/o Amar Singh, Harinder Kaur W/o Sohan Singh and Mohinder Singh S/o Karam Singh. Sir, It is requested that the following persons entered into an agreement to sell 58 marlas, 57 marlas, 58 marlas, 57 marlas total 220 marlas out of khasra No.588 for total consideration of Rs.40 lacs, copies of which are attached but thereafter they did not start any talk with us for executing the Sale Deed of the above land. That they received Rs.40 lacs

CRM-M-43735-2023 (O & M)
(102)

::2::

from us and now refused to execute the Sale Deed in our favour. They have played fraud with us. 1) Sohan Singh S/o Amar Singh R/o Dulchi Majra, District Ropar (99152-27517). 2) Harinder Kaur W/o Sohan Singh R/o Dulchi Majra, District Ropar. 3) Mohinder Singh S/o Karam Singh R/o House No.29, Near Government Tubewell, Palsaura, U.T., Chandigarh (98144-69794) kindly necessary legal action may be taken against these accused. Thanking you, yours faithfully Sd/- Iqbal Singh 1.9.11 S/o Karnail Singh village Rajindergarh, Tehsil & District Fatehgarh Sahib 9914204213, 9417702425, 9417472555. The SSP Sahib marked the above complaint to the SHO, Police Station, City Kharar for investigation and report but above said Iqbal Singh submitted another complaint No. 1446/peshi/SSP 29/9/11, in which Iqbal Singh wrote that he wanted to get his complaint investigated from Economic Offences Wing, Mohali which was marked by inspector Pritam Singh Incharge Economic Offence Wing to ASI Phool Chand Economic Offence Wing(C) for investigation, the result of which is like this: RESULT REPORT The inquiry report made till now, statement of revenue Patwari, record and agreement to sell has been examined carefully. It has been found from the complaint and statement of the complainant that Iqbal Singh executed four agreements to sell on 8.6.2005 according to which an agreement to sell was executed with Sohan Singh regarding 58 shares (0-58 Marla) khasra No.588 in khewat/khatoni No.640/725 the land situated in Kharar to whom Rs. 10 lac were given at the time of agreement and one more agreement to sell on the same day was executed with Smt. Harinder Kaur W/o Sohan Singh S/o Amar Singh R/o Dulchi Majra, District Ropar, regarding 57 shares (0-57 Marla) in the same khasra No.588 in khewat/khatoni Number and Rs 10 lac were given to Harinder Kaur on 8.6.2005 at the time of agreement. One more agreement to sell with Mohinder Singh S/o Karam Singh House No.29, Near Government Tubewell, village Palsaura, U.T. Chandigarh with Iqbal Singh regarding 58 shares (0-58 Marla)

CRM-M-43735-2023 (O & M)
(102)

::3::

and Mohinder Singh received Rs.10 lac at the time of agreement. Mohinder Singh previously executed this agreement with Tara Singh S/o Dharam Singh and Kamla Yashvir W/o Tara Singh R/o Tuto Majra, District Hoshiarpur regarding 115 shares (115 Marlas) out of khasra No.588 and on the same day one more agreement was executed by above said Mohinder Singh with Iqbal Singh regarding 57 shares (0-57 Marla) out of khasra No.588 and received Rs. 10 lac at time of agreement. This agreement was previously executed by Mohinder Singh with Kamla Yashvir Singh W/o Tara Singh. Therefore, on 8.6.2005 Iqbal Singh executed 4 agreements to sell with Sohan Singh, Harinder Kaur and Mohinder Singh and paid Rs.40 lac cash. The date of Sale Deed was fixed as 16.5.2006 in all the 4 agreements and the balance amount was to be given by Iqbal Singh at the time of Sale Deed but in the meantime on 1.7.05 the Commissioner Patiala Division, Patiala stayed his own order of mutation No.20363. So a case started due to stay order on khasra No.588 and on 15.5.06 the date was extended till the pendency of case but Sohan Singh, Harinder Kaur and Mohinder Singh neither returned the amount of the complainant nor did execute the Sale Deed. Mohinder Singh S/o Karam Singh caste Ramgharia House No.29, Palsaura, Near Government Tubewell stated in his statement that he was driver of the vehicle of Sohan Singh. On asking of Sohan Singh he executed agreement to sell on 8.6.05 on lower rates previously with Tara Singh S/o Dharam Singh and his wife Kamla Yashvir Singh, R/o Tuto Majra, District Hoshiarpur and thereafter executed two agreements with Iqbal Singh S/o Karnail Singh village Rejindergarh on higher rates. Out of the amount he received from Iqbal Singh, Rs.7,50,000/- Sohan Singh gave to Tara Singh. The balance amount was retained by Sohan Singh with him. I have only put my signatures. From the inquiry report it has also been found as per report of Parwari Tarlochan Kumar, the names of Harinder Kaur W/o Sohan Singh and Kamla Yashvir W/o Tara Singh are not there in the

CRM-M-43735-2023 (O & M)
(102)

::4::

revenue record due to this reason, the agreements made in their names are wrong and Sohan Singh, Harinder Kaur and Mohinder Singh in connivance with each other executed 4 agreements to sell and received Rs.40 lac from Iqbal Singh and till now neither executed Sale Deed in his name nor returned the amount to him. In this regard, after obtaining the opinion of DA Legal, it is recommended to register the FIR. Sd/- Phool Chand ASI EOW(C) dated 27.2.12. On which Inspector Pritam Singh Incharge:-Economic Offences Wing(C) after agreeing with the report of ASI Phool Chand and after obtaining the opinion of DA Legal recommended to register the case. Sd/- Pritam Singh Inspector Incharge:-Economic Offences Wing(C) 27.2.12. The above complaint was sent to Hon'ble SSP Sahib, Deputy Superintendent of Police who agreeing with the report of the Investigation Officer and after obtaining the opinion of DA Legal recommended to register the case. The Hon'ble SSP Sahib sent the above complaint to Superintendent of Police who sent to Superintendent Police Local who after taking the opinion of Investigating Officer and DSP(D) and expressing his agreement sent to Hon'ble SSP Sahib. Who sent the above complaint along with inquiry report to DDA Legal for opinion whose opinion is like this. No.1597 DDA Legal dated 17.12.13. Subject-Complaint No. 1283 peshi/SSP/SAS Nagar dated 1.9.11 and 1446 peshi dated 29.9.12. Complaint from Iqbal Singh S/o Karnail Singh R/o Village Rajindergarh, Tehsil and District Fatehgarh Sahib. Sir, I have examined the complaint of the complainant, documents placed on the file, statements of the witnesses and the report of the Investigating Officer. In my opinion, prima-facie, offence under Section 406, 420, 120-B IPC is made out against the second parties Sohan Singh, his wife Harinder Kaur and Mohinder Singh. Sd/- DDA Legal, SAS Nagar. On which Hon'ble SSP Sahib ordered to SHO, City Kharar to register the case and investigate Sd/- SSP SAS Nagar. After receiving FIR registered for the above offences against above persons and copy of the FIR is forwarded to Ilacqua

CRM-M-43735-2023 (O & M)
(102)

::5::

Magistrate and Higher Officers through Dak. The Control Room SAS Nagar and Circle DSP, Kharar were informed on telephone. The FIR file alongwith complaint is being sent to ASI Harpal Singh for investigation. The MHC is directed to complete the record."

3. The wife of the present petitioner, namely, Harinder Kaur approached this Court for the grant of pre-arrest bail by filing of CRM-M-3733 of 2014 and was granted anticipatory bail vide order dated 07.03.2014 subject to the following conditions:-

".....The petition is allowed subject to her depositing 50% of the amount received by her subject to the condition that she will discharge her part of civil liability. She is ordered to be released on bail to the satisfaction of the arresting officer subject to following conditions:-

(i) Petitioner will join the investigation as and when required by the police and the petitioner will give a sum of Rs.3 lacs to the complainant within a period of one month from today as she has agreed to discharge her part of the liability.

(ii) The petitioner will not tamper with the evidence or hamper the investigation in any manner.

It is made clear that in case of violation of any of the aforesaid conditions it will be open to the prosecution to seek cancellation of the bail order..."

4. The present petitioner earlier approached this Court for the grant of pre-arrest bail by filing a petition bearing No. CRM-M-7617 of 2014 which was dismissed vide order dated 07.04.2014 with the following observations:-

"The petitioner is alleged to have received a sum of ` 10 lacs and connived with his co-accused in not executing the sale deed. An interim protection was granted to the petitioner

CRM-M-43735-2023 (O & M)
(102)

::6::

subject to pay a sum of ` 10 lacs to the complainant Iqbal Singh as agreed by the petitioner. Petitioner has not complied with the said direction.

There are no extra ordinary circumstances existing for grant of pre-arrest bail to the petitioner.

Dismissed without prejudice to the right of the petitioner to approach this Court after arranging/ paying a sum of ` 10 lacs to the complainant”.

5. Thereafter, the petitioner once again approached the Court of Additional Sessions Judge, SAS Nagar (Mohali) for the grant of pre-arrest bail by way of a petition bearing BA No.1121 of 2020 which was dismissed vide order dated 13.07.2020 with the following observations:-

"...As per the record, it is clear that this is 3rd bail application moved by the applicant Sohan Singh. He has been gaining time by moving such applications since 2014. earlier he had given an undertaking in the Hon'ble High Court but failed to comply with the same. Even till today, he has not complied with the order of payment of ₹10,00,000/- each by him and his wife. As such no ground is made to grant him anticipatory bail and the bail application filed by the applicant Sohan Singh is dismissed. Police record be returned. File be consigned to the Record Room..."

6. So far as Mohinder Singh is concerned, he was arrested in the present case on 08.12.2023 and the report under Section 173 Cr.P.C. stands presented against him on 04.02.2024.

7. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The dispute which was purely of a civil nature had been converted into a criminal case. The instant FIR had been got registered as the complainant could neither institute

CRM-M-43735-2023 (O & M)
(102)

::7::

a suit for recovery nor did he file a suit for specific performance of the contract. While granting interim bail to the petitioner at the first instance, the Court could not have directed him to pay a sum of Rs.10 lacs to the complainant-Iqbal Singh. Be that as it may, the petitioner had indeed tried to arrange money but could not do so. He had agreed to make the payment but to his shock, the complainant had stated that he would charge a sum of Rs.5 lacs to give consent for the grant of bail to him and his wife. It was, in these circumstances, that his first bail petition came to be dismissed as he was unable to arrange the said amount and a further amount of Rs.5 lacs as sought by the complainant. As the dispute was purely of a civil nature and the petitioner was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

8. The learned counsel for the State alongwith the counsel for the complainant, on the other hand, while referring to the replies dated 29.09.2023 and 20.03.2024 contend that the petitioner and his wife were playing hide and seek with the Court. His wife-Harinder Kaur had been granted the concession of anticipatory bail with the condition that she would deposit 50% of the amount received by her. She failed to do so for the last 10 years and therefore, the State was in the process of filing a petition to cancel her bail. So far as the present petitioner was concerned, he had consented to pay an amount of Rs.10 lacs to the complainant. It was only when the said payment was not made, that his bail application came to be dismissed. Interestingly, his first petition for bail was dismissed way back on 07.04.2014. Thereafter, he approached the Sessions Court once again which dismissed his third petition for the grant of anticipatory bail on 13.07.2020 after which he approached this Court. He had been absconding

CRM-M-43735-2023 (O & M)
(102)

::8::

for the last 10 years. Proceedings under Sections 82 and 83 Cr.P.C. were initiated against the accused and his arrest warrants had also been obtained from the Court and efforts were being made to execute them. On account of the lapse on the part of the investigating agency, departmental action had been ordered against various police officials. Be that as it may, an SIT had now been constituted which had led to the arrest of Mohinder Singh, a co-accused of the petitioner and a report under Section 173(2) Cr.P.C. stands presented against him. As the first bail petition of the petitioner came to be dismissed way back in the year 2014, the instant second petition had been filed without any change in natural circumstances, the offence stood *prima facie* established against him and he had been absconding from the last 10 years, he was not entitled to the concession of anticipatory bail. Reliance is placed on '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***' and '***Srikant Upadhyay and ors. Versus State of Bihar and anr. (Special Leave Petition (Crl.) No.7940 of 2023 decided on 14.03.2024)***'

9. I have heard the learned counsel for the parties.

10. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', has held that merely because custodial interrogation was 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. ”

11. The Hon'ble Supreme Court in the case of ***‘Srikant Upadhyay and ors. Versus State of Bihar and anr. (Special Leave Petition (Crl.) No.7940 of 2023 decided on 14.03.2024)’*** has held as under:-

“24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant”.

12. An examination of the record would reveal that the FIR was registered on 08.01.2014 on the basis of complaints made in September,

2011. The wife of the petitioner had been granted anticipatory bail on

CRM-M-43735-2023 (O & M)
(102)

::11::

certain conditions which she refused to fulfill. On account of extreme laxity on the part of the investigating agency, no further action was taken against her for cancellation of the bail granted to her. So far as the present petitioner was concerned, his first bail petition came to be declined vide order dated 07.04.2014 after which he had been absconding. He had instituted his third petition for the grant of anticipatory bail before the Sessions Court which also came to be dismissed. It was only three years thereafter that he filed the instant second petition for the grant of anticipatory bail without any change in the circumstances whatsoever. A perusal of the FIR would reveal that not only is the *prima facie* offence established but the custodial interrogation of the petitioner is certainly required to take the investigation to its logical conclusion. Even otherwise, as he is absconding for the last 10 years and warrants of arrest have also been issued against him, the question of grant of anticipatory bail to him at this stage does not arise.

13. In view of the above, I find no merit in the present petition. Therefore, the same stands dismissed.

14. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

March 20, 2024
sukhpreet

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