

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-46210 of 2023 (O&M)
Date of Decision: 18.03.2024

Arohan Kapur ...Petitioner
Vs.
State of Haryana ...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Arnav Ghai, Advocate, for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

Mr. Shrey Ashat, Advocate and
Ms. Preetika Mishra, Advocate and
Mr. Vicky Kumar, Advocate, for the
respondent/complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 438 Cr.P.C. for grant of anticipatory bail to him in case FIR No. 177 dated 25.04.2021 under Sections 420, 406, 467, 468 and 120-B of IPC (Sections 406, 467, 468 and 120-B IPC added later on) registered at Police Station Sector 40 Gurugram, District Gurugram.
2. Learned counsel for the petitioner contends that the FIR in the present case was ordered to be registered on 25.04.2021, after a delay of several years, on the basis of the complaint filed by Harvinder Singh, complainant, who had alleged that Virender Kapur and Anita Kapur, parents of the petitioner had entered into an

agreement to sell dated 23.06.2016 regarding an immoveable property, by concealing the fact that the same was allegedly encumbered and had received a sum of Rs. 3,35,00,000/-. The agreement to sell was executed by the parents of the petitioner and the amount was received by them and initially the FIR registered against them under Section 420 IPC. Learned counsel further contends that after the registration of the FIR, the petitioner applied for grant of relief of anticipatory bail before the Court of Sessions Judge, Gurugram and the bail petition filed by the petitioner was allowed vide order dated 21.06.2021 with the following observations:-

“8. At this juncture, the police is only investigating the alleged offence punishable u/s 420 IPC which prescribes the punishment of imprisonment upto 7 years. As per the allegations, the applicant-accused had participated in the negotiations which led to the agreement to sell and had also communicated by way of e-mail in the year 2018.

9. Withal, the applicant is neither the party to the agreement to sell nor the witness. Apparently, he is also not the beneficiary of the alleged agreement. Even if he had communicated on behalf of his parents by sending some e-mail, his custodial interrogation will not serve any purpose as such communication by way of electronic media is a matter of record which can be retrieved from either end. No amount is to be recovered from the applicant-accused. In fact, no ground to justify custodial interrogation has been mentioned in the reply filed by the investigating officer. No previous criminal record has

been mentioned in the reply. The cause of investigation can very well be furthered if the applicant-accused joins the investigation. No ground is made out for justifying the custodial interrogation.

10. For the aforesaid reasons, the present application for anticipatory bail filed on behalf of the applicant-accused Arohan Kapur is hereby allowed and it is ordered that in the event of the arrest of the applicant-accused, he shall be released on bail subject to furnishing of personal bonds and surety bonds in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of the arresting officer/investigating officer. The accused shall join the investigation as and when called by the investigating officer and would abide by the conditions enshrined u/s 438 (2) Cr.P.C. No expression of this order shall be construed to be an opinion on the merits of the case. File be consigned to record room after due compliance”.

3. Learned counsel further contends that after the grant of anticipatory bail to the petitioner, the police colluded with the complainant of the present case and tried to array the petitioner as an accused for additional offences under Sections 406, 467, 468 and 120-B IPC, which were added on 14.10.2021. He further contends that the petitioner had already joined the investigation repeatedly, but the local police was bent upon to arrest the petitioner, at the instance of the complainant of the present case. Consequently, a notice under Section 41 of Cr.P.C. dated 24.10.21021 was issued to the petitioner. The petitioner again filed an anticipatory bail petition before this

Court and this Court held that there was no apprehension of arrest as on that day, no case is made out for interference and the petition was ordered to be dismissed. Learned counsel further submits that from the above referred submissions, it was proved that the police wanted to arrest the petitioner, without following the due process of law. Ultimately, in compliance of the notices under Section 41 Cr.P.C., the petitioner went to the police station for joining the investigation, but he was not allowed to join by the Investigating Officer. Thereafter, an application dated 30.05.2023 was moved before the trial Court for obtaining warrants of arrest against the present petitioner and vide order dated 30.05.2023 (Annexure P-6), the trial Court had issued warrants of arrest against the present petitioner. Learned counsel further submits that in fact Verinder Kapur, father of the petitioner and the complainant were having close relations for the last about 20/25 years. The complainant had borrowed money from Virender Kapur on several occasions between 2013 to 2015 and a total sum of Rs. 96,24,728/- had been transferred to the account of the complainant from the account of the firm of the co-accused, which is evident from the account statement (Annexure P-9). At the time of certain transactions, the complainant in good faith had obtained the signatures of Virender Kapur on certain blank papers and with the help of the blank signed papers, the false agreement to sell dated 23.06.2016 was forged and fabricated. Even, from a bare perusal of the agreement to sell (Annexure P-7), it is clear that the signatures

were overlapping on the contents of the agreement on various pages and there were double signatures on some of the pages, while on other pages, there were only single signature. Even, the said manipulation was apparent on record. Apart from that, the complainant has filed a Civil Suit No. 1585 dated 19.04.2021 and the same is pending in the Court of Civil Judge (Junior Division), Gurugram and the complainant had intentionally concealed the factum of pendency of the civil suit between the parties before the competent Court. He further contends that the documentary evidence is already part of the evidence/record before the Civil Court and nothing was required to be recovered from the present petitioner. Since, the petitioner had already joined the investigation repeatedly, his custodial interrogation was not imperative in the facts of the present case.

4. On the other hand, learned State counsel assisted by the learned counsel for the complainant had vehemently opposed the submissions made by the learned counsel for the petitioner. Even, it has been stated that the petitioner was initially named in the complaint/FIR itself and had actively participated in the commission of the crime with his parents. Still further, Aditiya Birla Finance Limited had already filed a writ petition against the complainant and others before the Hon'ble High Court of Delhi and various other litigations/complaints were pending before the different forums.

5. I have heard learned counsel for the parties and perused the record.

6. It has been held by the Hon'ble Supreme Court of India in the matter of **Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another, 2015(1) SCC (Criminal) 240** as follows:

“20.Though the Court observed that the principles which govern the grant of ordinary bail may not furnish an exact parallel to the right to anticipatory bail, still such principles have to be kept in mind, namely, the object of bail which is to secure the attendance of the accused at the trial, and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. The Court has also to consider whether there is any possibility of the accused tampering with evidence or influencing witnesses etc. Once these tests are satisfied, bail should be granted to an undertrial which is also important as viewed from another angle, namely, an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. Thus, grant or non-grant of ball depends upon a variety of circumstances and the cumulative effect thereof enters into judicial verdict. The Court stresses that any single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail. After clarifying this position, the Court discussed the inferences of anticipatory bail in the following manner:

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of

*furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in **The State v. Captain Jagjit Singh, AIR 1962 Supreme Court 253: (1962) 3 SCR 622: (1962) 1 Cri LJ 216**, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is*

of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

21. It is pertinent to note that while interpreting the expression "may, if it thinks fit" occurring in Section 438(1) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a "special case". The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use.

22. Another case to which we would like to refer is the judgment of a Division Bench of this Court in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra and Others**, 2011(1) RCR (Criminal) 126: 2010(6) Recent Apex Judgments (R.A.J.) 581: (2011) 1 SCC 694. This case lays down an exhaustive commentary of Section 438 of the Code covering, in an

erudite fashion, almost all the aspects and in the process relies upon the aforesaid Constitution Bench judgment in Gurbaksh Singh's case. In the very first para, the Court highlighted the conflicting interests which are to be balanced while taking a decision as to whether bail is to be granted or not, as is clear from the following observations:

"1. Leave granted. This appeal involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest. Society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests, namely, on the one hand, the requirements of shielding society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand, absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty."

7. In the present case, the main dispute pertains to the execution of agreement to sell dated 23.06.2016 by the parents of the present petitioner. The present petitioner is admittedly neither a party to the agreement to sell and had not even signed the said agreement in his capacity as a witness. Apart from that, he could never be termed as beneficiary of the agreement to sell in any manner. Apart from that, he

was ordered to be released on anticipatory bail on 21.06.2021 (Annexure P-2) by the Court of Additional Sessions Judge, Gurugram by observing that there was no ground to justify the custodial interrogation of the petitioner. Apart from that, the petitioner is first offender and a civil suit with regard to the same controversy was pending for adjudication before the Civil Judge (Junior Division), Gurugram. Even during the course of arguments, no argument has been advanced by learned counsel for the State, which could justify the need for custodial interrogation of the petitioner.

8. In view of the above discussion, the present petition is allowed and the interim order dated 06.10.2023 is made absolute. The petitioner shall continue to join investigation, as and when called by the Investigating Officer and shall also abide by the conditions as provided under Section 438(2) of the Cr.P.C.

18.03.2024	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No