

Date of decision: 28.02.2024

...Respondent

(3) Allegations are that land measuring 13 kanals 5 marlas of the petitioner was acquired by National Highway Authority of India (for short 'NHAI') and in lieu thereof, he was entitled to receive compensation to the tune of Rs.94,43,122/- (Ninety Four Lakh, Forty Three Thousand, One Hundred and Twenty Two rupees); but inadvertently, an amount of Rs.

9,44,33,122/- (Nine Crore, Forty Four Lakh, Thirty Three Thousand, One Hundred and Twenty Two rupees) have been transferred in his account by the department and later on, petitioner failed to refund the excess amount despite repeated reminders; thus, he has committed criminal breach of trust.

(4) Learned Senior counsel contends that petitioner was granted interim bail by the Co-ordinate Bench on 23.12.2022 and in pursuance thereof, he has already joined investigation on various occasions. He further contended that petitioner is still ready to join the investigation as and when required by the Police. Again contended that it is not the allegation of the prosecution that petitioner has played any role in the transfer of alleged excess amount; rather it is the mistake or negligence on the part of the official concerned; thus, petitioner cannot be forced to face the prosecution under Section 406 IPC. Learned Senior counsel on instructions, specifically contended that petitioner has no objection in case the department is proceeding for auction of his remaining land through a transparent manner and they can recover the amount due, if any, in accordance with law. Lastly contended that since interim order has been extended from time to time and petitioner is fully cooperating in the matter; thus, there is no justification for asking his custodial interrogation.

(5) *Per contra* learned State Counsel on instructions, although acknowledged the factum of joining the investigation by the petitioner, but opposed the prayer on the premise that excess amount paid to him is yet to be recovered by the department. Also submitted that petitioner is not fully cooperating for auction of his land; hence, custodial interrogation is required in the matter.

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

(7) It transpires that the Co-ordinate Bench granted interim bail to the petitioner on 23.12.2022 and the order reads as under:-

“Prayer in the present petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case bearing FIR No.119 dated 09.11.2022 (Annexure P-1), under Section 406 IPC, registered at Police Station Phool, District Bathinda.

In pursuance of order dated 14.12.2022, wherein the petitioner had shown readiness and willingness to return the amount, which has been paid, over and above in excess of his entitlement as land acquisition compensation to the tune of Rs.94,43,122/- for his acquired land, petitioner had undertaken to pay another sum of Rs.90,00,000/- as recorded in order dated 22.12.2022.

Today, learned counsel for the petitioner has brought a Cheque bearing No.130743 dated 23.12.2022, amounting to Rs.90,00,000/-, in the name of DRO-cum-CALA, Bathinda, drawn on Axis Bank Ltd; copy thereof has been supplied in Court today, which is taken on record, subject to all just exceptions. Learned counsel for the petitioner submits that he has instructions from the petitioner that the land, which he had purchased with the amount which was paid over and above his entitlement, has been attached by the State Government and recovery proceedings have already been initiated in that regard. Learned counsel further submits that the petitioner shall have no objection in case the outstanding amount is recovered by way of sale of the said land (as detailed in paragraph No.6 of the instant petition).

Affidavit dated 23.12.2022 of Mr. Balkaran Singh, District Revenue Officer, Bathinda (respondent No.2) filed by learned

State counsel in Court today is taken on record, subject to all just exceptions. Paragraph No.6 of this affidavit reads as under:-

“ - x - x -

6. That total amount to be paid to petitioner was Rs.94,33,122/-, out of which Rs.81,38,494/- was transferred to petitioner on 18.04.2022 and Rs.13,04,628/- was to be paid on 26.04.2022 but inadvertently, Rs.9,44,33,122/- was paid to petitioner and after discounting Rs.13,04,628/- from above said amount, total Rs.9,31,28,494/- was paid in excess to petitioner. Out of which, petitioner returned Rs.1.5 Crores on 01.08.2022, as such Rs.7,81,28,494/- are due towards petitioner of the Government. As such from 26.04.2022 to 01.08.2022, bank rate of interest of 8% on amount of Rs.9,31,28,492/- comes to Rs.19,18,702/- and on remaining amount, i.e. Rs.7,81,28,494/-, interest w.e.f. 02.08.2022 to 22.12.2022, interest @ 8% comes to Rs.29,45,337/- calculating at bank fixed deposit rate. As such total amount due towards petitioner is Rs.8,29,92,533/-”

Learned State counsel upon instructions from Mr. Balkaran Singh, District Revenue Officer, Bathinda, who is present in Court, has submitted that the land as mentioned in paragraph No.6 of the petition has an approximate value of Rs.5,00,00,000/- (Rupees Five Crore only) and even after selling of the said land, some amount would still remain outstanding against the petitioner herein.

In this regard, learned counsel for the petitioner submits that the petitioner shall be ready and willing to make deficiency in the amount good, if any, even after the sale of land mentioned in paragraph No.6 of the petition,

however, he submits that sale of the land in question should be made in a transparent manner and the same should be videographed as well. Learned State counsel, assisted by Mr. Balkaran Singh, District Revenue Officer, Bathinda, further submits that they have no objection to the said course of action.

In view of the above, State Government/authorized officer/competent authority shall proceed to recover the recoverable amount by way of sale of land, mentioned in paragraph No.6 of the petition.

In the meanwhile, District Revenue Officer, Bathinda, shall also take steps for encashment of cheque No.130743 dated 23.12.2022 amounting to Rs.90,00,000/-.

List on 21.03.2023, for further consideration.

In the meantime, in the event of arrest of the petitioner, he shall be released on ad interim bail to the satisfaction of the Investigating/Arresting Officer. However, he shall join the investigation as and when directed by the investigating agency and shall abide by the terms and conditions laid down under Section 438(2) Cr.P.C.

Let a status report be filed in this case by Deputy Commissioner, Bathinda on the next date of hearing, clearly indicating therein the amount recoverable from petitioner (Gurdeep Singh @ Gurpreet Singh) and the details of amount

already recovered from petitioner herein and the balance amount (if any) which is still to be recovered.

In case any amount is still to be recovered after the sale of land and after adjusting the amount already paid by the petitioner, the said recoverable amount be duly conveyed to the petitioner well in advance before the next date of hearing, so as to enable him to come

forward with mode and manner in which the said recoverable amount shall be paid by him.”

(8) In pursuance of the aforesaid order, petitioner joined investigation and this fact is duly acknowledged by learned State counsel on instructions from the quarter concerned. However, learned State counsel opposed the prayer of petitioner on the premise that he is not cooperating for auction of his land to recover the remaining amount.

There is no allegation that petitioner has played any role in transfer of the excess amount in his account by the department; nor any material has been shown in this regard by learned State counsel during the course of hearing. Thus, *prima facie*, it appears that amount in question was credited into the account of petitioner by official concerned due to some mistake or negligence; but in such a scenario, his prosecution under Section 406 IPC would be a debatable question. Moreover, learned Senior counsel has specifically submitted that department may go for auction of the land of petitioner as per law and he has no objection in this regard. In order to secure the interest of the department, it is hereby ordered that petitioner shall be bound by the submission so made on his behalf by learned Senior counsel and resile from the same shall be considered as breach of an undertaking.

(9) In view of the above, petition is allowed; interim order dated 23.12.2022 is made absolute subject to the conditions as envisaged under Section 438(2) Cr.P.C.

(10) It is made clear that petitioner shall fully co-operate with the Investigating Officer as and when called for further investigation.

Also clarified that petitioner shall cooperate with the department for action of his land to recover the remaining amount in accordance with law.

(11) The above observations be not construed as an expression of opinion on merits of the case; rather confined only to decide the present bail matter.

(12) It is made clear that in case of any recurrence on the part of the petitioner, the State would be at liberty to move an application for recalling of this order.

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

28.02.2024

Harish Kumar

(MAHABIR SINGH SINDHU)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>