

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-60352-2022
Date of Decision:18.01.2024

Mohan Singh Bal ...Petitioner

VS.

State of Punjab ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. P.S.Ahluwalia, Advocate
for the petitioner.

Mr.M.S.Bajwa, Deputy Advocate General, Punjab.

Mr. Amardeep Singh Gill, Advocate
for the complainant.

N.S.Shekhawat J. (Oral)

1. An affidavit has been filed by the complainant and the same is taken on record.
2. This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.142 dated 01.11.2022 under Sections 341, 342, 380 and 283 IPC, registered at Police Station Division No.1, Jalandhar.
3. While issuing notice of motion on 23.12.2022, this Court had noticed the following contentions:-

“FIR in the present case was registered on the basis of statement of S.K. Chaudhary, Advocate, with the allegations that he is a practicing lawyer at Jalandhar Court complex, Jalandhar. He was engaged by Sucheta Kalia as an Advocate for

her cases. In the year 2016, Sucheta Kalia had filed a case against Shaminder Kalia etc, under Domestic Violence Act, which was pending in the court of Mrs.Heena Aggarwal, Id. JMIC, Jalandhar. Said court pleased to pass order dated 30.08.2022 whereby Sucheta Kalia was ordered not to be dispossessed from house No.47-A Kalia Colony, Jalandhar. However, Rajinder Kalia, father in law of Sucheta Kalia had sold the said house to Mohan Singh Bal (present petitioner). On the first floor of said house, articles belonging to Sucheta Kalia and her daughter were lying. As there was no electricity connection, therefore Sucheta Kalia used to go to first floor of said house for taking and leaving certain articles. Petitioner had affixed lock on the said portion. An application in this regard was moved, which was sent for obtaining opinion of DA Legal. However on 31.10.2022 at about 03:50 pm, when Sucheta Kalia and her daughter went to said portion, they found that articles earlier lying in said portion were not there. The same had been misappropriated by the petitioner. Petitioner, his son R.S.Bal and his daughter in law Amardeep Kaur Bal alongwith 5/6 women and 10/15 men had blocked the passage of Sucheta Kalia and had sat on the road by laying carpet over there.

Learned counsel for the petitioner submits that firstly, a lawyer representing a party cannot get an FIR registered and further he was not representing the concerned party on whose behalf the instant FIR has been got registered. He further submits that even the contents of the FIR itself are incorrect and there is total concealment on the part of the complainant. There is a reference to the interim order dated 30.08.2022 passed by the Court of learned Judicial Magistrate Ist Class, Jalandhar, whereby Sucheta Kalia was ordered not to be dispossessed from H. No.47-A, Kalia Colony, GT Road, Bypass, Jalandhar, and whereas the petitioner got the said property on the basis of registered sale deed dated 12.07.2022 (Annexure P-3) from the

owner of the property. He submits that the property in question was purchased by the petitioner much prior to the order passed by the Court. He has also referred to the order dated 22.09.2022 passed by the Court of learned JMIC, Jalandhar, wherein it has been recorded as under:-

*“In fact the applicant is no longer bona fide resident of H.No.47-A, Kalia Colony, Jalandhar. **Since the property has been sold vide sale deed dated 13.07.2022 and the respondents are no longer living in the property in question. Since the respondents are no longer owners of the said property, no protection order can be passed against them in respect of above-said property. The applicant along with her mother has already shifted to some other accommodation and are no longer in occupation of the property in question.** Therefore, it is prayed that the application deserves to be dismissed. I have heard learned counsel for both the parties gone through the file carefully. 5. The present petition is filed under Section 12 of Protection of Women from Domestic Violence Act, 2005. Alleging domestic violence at the hands of respondent who is the father of the petitioner along with respondent No.2 to 4. Earlier, the applicant had obtained an order qua stay of alienation on 16.07.2022. However, **the respondent has placed on record sale deed dated 12.07.2022, this showing that the property in question had already been sold before the passing of stay order. The applicant concealed the factum of sale as well as filing of an earlier petition under Domestic Violence Act.***

*6. By way of present application the applicant wishes to seek directions against PSPCL for installation of separate electricity meter in the property in question in which she alleges her right of residence. **This Court is of the opinion that the property which no longer remains under the ownership of the respondent cannot be considered as shared household for the purpose of Domestic Violence Act.** In such, circumstances the remedy available to the*

*petitioner-applicant is to seek residence orders in an alternative accommodation or rental expenses in the alternative. **No orders affecting the rights of subsequent purchaser can be passed in the present petition. Remedy if any shall be available to the petitioner to seek cancellation of the sale deed in civil suit which is not under the jurisdiction of the present Court in this petition.** Therefore, no directions can be issued to the PSPCL, as sought for. Accordingly, the present application stands dismissed.*

**Pronounced in open Court
Dated: 22.09.2022**

**Sd/-
(Shagun)
Judicial Magistrate, Ist Class
Jalandhar(UID No.PB0419)”**

He further submits that Sh. Rajinder Kumar Kalia, owner of the property, made a statement before the police on 08.08.2022 to the effect that he had sold his house to the present petitioner on 13.07.2022 and produced the registry and also his Aadhar card and also submitted that he has given full and final possession on 13.07.2022 itself. Learned counsel for the petitioner has also referred to earlier complaint dated 18.07.2022 (Annexure P-5) made by the complainant to the Commissioner of Police, Jalandhar, wherein same allegation was levelled that on 18.07.2022 when she reached her house and saw accused No.4-Mohan Singh Bal (present petitioner) and accused No.5-Ravinder Singh Bal with their workers lifting various household articles from her shared household property by trespassing inside the property and all of them moved outside the house on seeing her and same allegations have been levelled in the FIR and the said incident has been alleged to have taken place on 31.10.2022. He further submits that petitioner is 79 years old person, suffering from heart ailment and cancer and the medical record to this effect has been attached as Annexures P-8 and P9. He further submits that other co-accused, namely, R.S. Bal and Amardeep Kaur Bal have already been granted pre-arrest bail by the Court of learned Additional Sessions Judge, Jalandhar, vide order dated

09.12.2022 (Annexure P-7). He further submits that petitioner is not involved in any other case and no recovery is to be effected from the petitioner and, therefore, his custodial interrogation is not required and he is ready and willing to join the investigation.”

4. Learned counsel for the petitioner has reiterated the above submissions again during the course of arguments.

5. Learned State counsel submits that the petitioner has already joined the investigation and his custodial interrogation is not required, at this stage.

6. Learned counsel for the complainant has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner has misused the concession of interim anticipatory bail granted by this Court. He further submits that at about midnight on 05.04.2023, the petitioner alongwith other co-accused had come to the house of the complainant and had assaulted her. They even entered in complainant's house by breaking house locks, turned off the street lights and took away the articles belonging to the complainant. Consequently, the police had registered one FIR No.51 dated 04.05.2023 under Sections 341, 457, 380, 427, 447, 149 of IPC, at Police Station Division No.1, Jalandhar against the petitioner and other co-accused (Annexure R-1).

7. In reply to the said submission, learned counsel for the petitioner submits that the petitioner and other accused applied for anticipatory bail in the above mentioned FIR No.51 dated 04.05.2023 and they have been admitted to concession of anticipatory bail by the Court of Additional Sessions Judge, Jalandhar and the following observations has been made by the Additional Sessions Judge, Jalandhar:-

“4. Admittedly, applicants/accused have already joined investigation in pursuance of order dated 12.05.2023 passed by this court. It has been stated by Investigating officer, who has brought the record that applicants/accused have not co-operated as they have not got recovered stolen articles and therefore, their custodial interrogation is required. On the other hand, it has been submitted by learned counsel for applicants/accused that no article was stolen by the applicants/accused, who are reputed doctors and police officials are pressurizing them to get recovered the articles to create evidence against them. Moreover, it is not duty of the police to recover articles and they can proceed under appropriate provisions of law. I have considered these submissions made by learned counsel for applicants/accused. It is matter of trial whether articles as stated by complainant were stolen by applicants/accused or not and at this stage, it cannot be held that they were guilty of stealing the articles and must get the same recovered. As stated by Investigating Officer, custodial interrogation of applicants/accused is not required for any other purposes. In these circumstances, no useful purpose would be served by taking the applicants/accused in to custody.”

8. I have heard learned counsel for the parties and perused the record.
9. At this stage, the learned State counsel has categorically stated that the custodial interrogation of the petitioner is not required. Even otherwise, the petitioner is aged about 80 years and is suffering from cancer. Thus, no purpose would be served by sending him behind bars.
10. In view of the statement made by learned State counsel and without commenting any further on the merits of the case, the present petition is allowed and the interim order dated 23.12.2022, passed by a Co-ordinate Bench of this

Court 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.

18.01.2024
hemlata

(N.S.SHEKHAWAT)
JUDGE

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