

KUSUM GUPTA

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Vinod Ghai, Sr. Advocate with
Mr. Jasdev Singh Mehndiratta, Mr. Edward George Masih and
Mr. Arnav Ghai Advocates for the petitioner

Mr. Ankit Grewal, DAG, Punjab.

Dr. Anmol Rattan Singh Sidhu Sr. Advocate with
Mr. Sunil Chadha, Sr. Advocate with
Mr. Akshay Chadha, Advocate for the complainant.

SANJIV BERRY, J. (Oral)

The instant petition has been preferred by the petitioner under
Section 482 of the Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023, praying
for grant of anticipatory bail in the following case (Annexure P-1):-

FIR No.	Dated	Sections	Police Station
195	26.10.2024	406, 420, 465, 467, 468, 471, 120-B IPC	Division No.5, Police District- Police Commissionerate Ludhiana, District Ludhiana

2. During course of hearing on 27.11.2024, the following order
was passed, relevant portion is reproduced here as under:-

XX XX XX

“2. It is inter alia contended by learned Senior Counsel
for the petitioner that the petitioner is innocent and has been
falsely implicated in this case. He contends that the allegations

levelled in the FIR are concocted, without any basis and intended to harass the petitioner. He submits that the instant FIR got registered by the complainant is without any basis and in fact there being no document to substantiate the allegations and the entire alleged transaction mentioned in the FIR revolve around the oral agreement allegedly entered between the parties in November, 2022. He contends that the complainant has alleged that the petitioner and other accused having agreed to sell piece of land to the complainant for which he had paid ₹54.5 lakh. He has referred to the Jamabandi for the year 2018-2019 pertaining to the land in question to say that vide mutation No. 4420 dated 22.02.2023 the petitioner Kusum Gupta had sold her share in the land to one Dinesh Gupta who in turn sold the land further to the complainant vide mutation No. 4471 dated 24.05.2023. He contends that since the said Dinesh Gupta also paid ₹54.5 lakh to the petitioner of the same land which he further transferred to the complainant, so the petitioner has got legal notice issued asking the complainant to take back the money vide Annexure P-3 being the extra amount. He submits that there is no fraud committed by the petitioner as the land in question has been sold to the complainant through aforesaid transactions with Dinesh Gupta on his asking. He contends that the petitioner is a house lady, having no criminal antecedents, as such seeks anticipatory bail.

3. Notice of motion.

4. Ms. Seena Sandhu, AAG, Punjab who is present in Court, accepts notice on behalf of State and seeks time to file reply.

5. Dr. Anmol Rattan Sidhu, Sr. Advocate assisted by Mr. Raghav Gulathi and Varun Sharma, Advocate have put in appearance on behalf of complainant to assist the State counsel and has opposed the bail petition by arguing that the

petitioner had not executed the sale deed in accordance with law despite having received the consideration of ₹54.5 lakh from the complainant and thus has defrauded and cheated the complainant. He further contends that with a view to defraud the complainant the petitioner had given the copy of jamabandi for the year 2017-2018 being hand written although computerized jamabandis were being issued by wrongly mentioning the name of Jasbir Kaur to be the owner of the property, as such no case is made out in favour of petitioner for grant of concession of bail.

6. After considering the rival contention and perusing the record, the State is yet to file reply in the matter and in the meanwhile, it is deemed appropriate that petitioner should join the investigation before deciding the present petition on merits. Consequently, the petitioner is hereby directed to join investigation within seven days from today and in the event of her arrest, she is ordered to be released on interim bail on her furnishing personal/surety bonds to the satisfaction of the Arresting/Investigating Officer. She shall also abide by the conditions as envisaged under Section 482(2) BNSS.

7. Adjourned to 09.12.2024.

8. Reply, if any, be filed on or before the next date of hearing”.

3. Learned State counsel has placed on record reply by way of an affidavit dated 08.12.2024 of Assistant Commissioner of Police, Civil Lines, Ludhiana, the same is taken on record. Copy thereof, has been supplied to

the counsel opposite.

4. Arguments advanced by the learned Senior counsel for the petitioner, learned counsel for the State assisted by learned Senior counsel representing the complainant have been heard and record perused with their assistance.

5. It is inter alia contended by learned counsel that by way of instant FIR blanket allegations have been made by the complainant to turn a dispute, at the most a civil one into a criminal dispute on the basis of alleged agreement pertaining to November 2022, which itself has not seen the light of the day, allegedly being an oral one. He contends that the complainant had paid an amount of ₹54.50 lakh to the petitioner for the purchase of piece of land owned by her and on the asking of the complainant the petitioner had got her share transferred in favour of one Dinesh Gupta vide mutation No. 4420 dated 22.02.2023 who later sold the same to the complainant vide mutation No. 4471 dated 24.05.2023. Since for the purpose of execution of the sale deed amount of ₹54.50 lakh was transferred by Dinesh Gupta also in favour of the petitioner regarding land which was transferred in his name on the asking of the complainant by the petitioner, therefore, the petitioner had got legal notice issued vide Annexure P-3 asking the complainant to take back the amount, the extra amount with her pertaining to the aforesaid transaction. He has categorically contended that the petitioner being a house lady having no criminal antecedents, has not committed any fraud but has been roped in the present case by the complainant to harass her. He contends that the petitioner has already joined the investigation, in compliance of the order dated 27.11.2024 passed by this Court, as such prayed for grant of anticipatory bail.

6. Per contra, learned State counsel assisted by learned Senior counsel representing the complainant have assailed these arguments by submitting that the petitioner has actively participated in the commission of fraud upon the complainant, as such does not deserve concession of bail. Admittedly the petitioner has joined the investigation but according to them referring to the reply submitted by the State, the petitioner has failed to disclose any fact regarding the *modus operandi* and commission in preparing forged and fabricated jamabandi. It is contended that the petitioner had handed over the hand written jamabandi to the complainant showing Jasbir Kaur to be the owner of the property as per Mutation No. 6441 which *per se* is fabricated and forged one and the custodial interrogation of the petitioner is required to unearth the *modus operandi*. They contended that in fact as per the said hand written jamabandi photo copies which are on record with the police no said patwari ever existed who had given these copies of the same on 21.11.2022 and 14.03.2023. It further contended that the petitioner had received extra amount of ₹54.50 lakh for sale of the property and after complainant having given complaint to the police the legal notice Annexure P-3 has been issued just to avoid liability.

7. After considering the respective arguments and perusing the record, it transpires that the petitioner has been implicated in the present case as accused alleging her to be a party to the oral agreement executed somewhere in November 2022 by the complainant along with petitioner and other co-accused for sale of land for which ₹54.50 lakh was given to the petitioner for sale of piece of land. It is the case put forth that she had not transferred the land and had retained amount with her thereby committing fraud with the complainant. In this regard, it is worth mentioning that the

version given by the learned counsel for the petitioner in this regard finds ample support from the revenue record as well that the petitioner has sold her piece of land for ₹54.50 lakh in favour of one Dinesh Gupta, on the asking vide mutation No. 4420 dated 22.02.2023, in turn said Dinesh Gupta further sold that piece of land vide mutation No. 4471 dated 24.05.2023. The learned counsel for the complainant could not show as to which part of land remained with the petitioner to be transferred in favour of the complainant. Moreover the alleged agreement in question being an oral one nothing could have gathered as to what were the terms and conditions thereof and between whom the same was executed. Further, it is not disputed that a legal notice Annexure P-3 has already been issued by the petitioner before registration of the FIR asking the complainant to take back the excess amount of ₹54. 50 lakh from her. The same amount was also transferred by aforesaid Dinesh Gupta in her favour at the time of execution of sale deed of the land which ultimately was sold by said Dinesh Gupta to the complainant vide mutation no. 4471 dated 24.05.2023. Another allegation put forth by the complainant is that the photo copies of hand written jamabandi for the year 2017-2018 of Village Issewal pertaining to the land of one Jasbir kaur, are fabricated documents given by the petitioner and other co-accused on 21.11.2022 and 14.03.2023. This argument do not seem plausible, keeping in view the fact that the complainant happens to be a Realtor and Developer knowing fully well that the entire revenue record is computerized by the State and it is not plausible to believe that he relied upon the alleged photo copied hand written revenue record without verifying the same because for all intent and purposes in such like transactions the principle of “buyer beware” has to be taken note of. Admittedly, the alleged documents do not bear the signature

of the petitioner on it, so as to bind the petitioner in any manner.

8. Admittedly, the factum of petitioner having joined the investigation is not disputed by learned State counsel. However the ground taken by the State in the reply opposing the bail and requiring his custodial interrogation have been considered and found to be not plausible or justifiable at all.

9. The petitioner having already joined the investigation in compliance of the order dated 27.11.2024 passed by this Court and no case is made out for custodial interrogation, therefore, considering all the above facts and circumstances, without commenting on the merits of the case, interim bail granted to petitioner is hereby confirmed, subject to conditions as envisaged under Section 482(2) BNSS. Further, he will not tamper with the evidence nor will influence the witnesses; shall cooperate with the investigation as and when so required; not to leave the country without prior permission of the Court.

10. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

11. Pending CM applications, if any shall also disposed of.

(SANJIV BERRY)
JUDGE

09.12.2024

Gyan	i)	Whether speaking/reasoned?	Yes/No
	ii)	Whether reportable?	Yes/No