

police station City Kurali, under Section 420, 467, 468, 471 IPC. To save themselves from the abovesaid FIR, the aforesaid accused hatched a conspiracy and forged a Special Power of Attorney by forging my and my wife's signatures. I have also come to know that these accused persons have further used forged Special Power of Attorney (copy attached) to grab my and my wife's property situated at Village Kurali and also illegally submitted the same in the court for seeking bail. Prayer:- in view of the above facts, it is prayed that an FIR may kindly be lodged 467, 468, 471 r/w 120-B IPC against Vishal Tiwari & Anil Tiwari and the accused may kindly be arrested and the forged document may kindly be recovered. Submitted by: Ramesh Kumar Garg r/o House No.1370, Sector 40B, Chandigarh, Mobile No.98788- 91370. The inquiry of the complaint got conducted by Deputy Superintendent of Police (Narcotics) on the orders of Senior Superintendent of Police, SAS Nagar who submitted in the conclusion report of his inquiry report bearing No.201/5C/DSP/Narcotics dated 19.01.2024 "that the inquiry conducted by me on the basis of statement, fact and evidence placed on record, it is found that complainant Ramesh Kumar Garg and the respondent party Anil Kumari Tiwari were business partners and were selling & purchasing land jointly. Both the parties have joint property measuring 58 Kanals 09 Marlas bearing Khasra No.40//22, 22, 24, 59//1, 2, 3, 9 (7-13), 10//01 (2-16) situated at Kurali, Ward No.5, Tehsil Kharar, District SAS Nagar, from which registry of 16 Kanals 06 marlas land is in the name of complainant Ramesh Kumar Garg. The adjacent land to this property which is 33 Kanal 15 Marlas bearing Khasra No.59//4, 7, 8, 12//02 (1-15), 13//02 (07-03), 18//01 (0-17); 10 Kanal 06 Marla registry is in the name of the wife of the complainant namely Poonam Garg. The total property of the complainant party is 26 Kanals 06 Marlas. An FIR No.28 dated 01.07.2023 under Section 406, 420, 465, 467, 468, 471 IPC was registered at PS Sicty Kurali, District SAS Nagar for selling the land of the complainant party by the opposite party. During investigation, Anjali Tiwari daughter of Anil Tiwari and Vishal Tiwari son of Anil Tiwari residents of House No.1111/1, Sector 29B, Chandigarh were nominated as an accused. Accused Vishal Tiwari filed an anticipatory bail bearing CRM-M No.46742 of 2023 before the Hon'ble Punjab & Haryana High Court, wherein, Vishal Tiwari used this Power of Attorney (SPA). The challan in the abovesaid FIR No.28 dated 01.07.2023 under Section 406, 420, 465, 467, 468, 471 IPC, Police Station City Kurali, District SAS Nagar was presented before the Hon'ble Court, which is under trial. The Special Power of Attorney (SPA) used by Vishal Tiwari for his anticipatory bail was executed on 08.06.2002 between Poonam garg wife of Ramesh Kumar Garg resident of House No.1370, Sector 40B, Chandigarh, Ramesh Garg son of Shri Milkhi Ram Aggarwal resident of House No.1370, Sector 40B, Chandigarh and opposite party Late

Usha Tiwari wife of Anil Tiwari resident of House No.1111/1, Sector 29B Chandigarh. In which it was written the land bearing Khata No.1198/1370, 1194/ 1352, 1344/1560 bearing Khasra No.56//12/22, 12/2, 4, 8, 18/1, 10//17 total measuring 41 Kanal 14 Marla situated at Kurali, Tehsil Kharar, District Mohali, whereby, Anil Kumar Tiwari was given the Special Power of Attorney and for getting the colony passed in the abovesaid land under T.P. Scheme from PUDA this special power of Attorney was nominated with the signatures of Ramesh Garg and others. That According to the stamp affixed on the passport copy submitted by the applicant's wife during the investigation, Poonam Garg had gone abroad to Canada on 19.03.2006 and returned to India on 19.12.2006. The SPA is dated 08.06.2006 and the SPA was made in the of the said Poonam Garg and which is notarized, while Poonam Garg was abroad in Canada at that time. Therefore, from the said circumstances, it is found that Anil Kumar Tiwari of the respondent party has made a forged and fabricated SPA and Vishal Tiwari has used this forged and fabricated SPA in the Hon'ble High Court in the abovementioned case during bail. During investigation the respondent party Anil Tiwari, Vishal Tiwari and Anjali Tiwari have filed their anticipatory bail petitions before Hon'ble Additional Sessions Judge, District SAS Nagar, Shri Avtar Singh (BA 4084 of 2023, BA 4077 of 2023 and BA 4078 of 2023), on which the Hon'ble Court has ordered that "However, two days notice should be given prior to the arrest of the accused, but this Court is of the considered view that if the accused are involved in any cognizable and non-bailable offence, the police is at liberty to proceed further as per law, therefore, if approved, Anil Tiwari son of Lachmi Chand Tiwari and Vishal Tiwari son of Anil Tiwari, resident of House No.1111/1, Sector 29-B, Chandigarh, be proceeded against under Section 420, 465, 467, 468, 471, 474, 120- B IPC at Police Station Kharar, District SAS Nagar and upon filing the case the original passport of wife of the complainant party, Poonam Garg be obtained and it be verified from the Indian Immigration Department and if any other accused is found to have a role in the present case then as per the orders of the Hon'ble Court, advance notice of two days be given to the accused. Report is presented. Sd/- DSP, Narcotic, District SAS Nagar and the Hon'ble SSP, District SAS Nagar has written to SHO, City Kharar, registered the case and investigate. On which the complaint was received at the police station and the case against the above named accused, Anil Tiwari son of Lachmi Chand Tiwari and Vishal Tiwari son of Anil Tiwari, resident of House No.1111/1 Sector 29-B, Chandigarh is filed and the record has been completed, Duplicate FIR has been sent to Ilaka Magistrate, Kharar and superior officials through mail. Incharge Control Room, SAS Nagar has been informed through telephone. Original complaint alongwith FIR has been

received by me on orders of the SHO for further investigation. It is requested that the record be completed.”

3. **Contentions**

On behalf of the petitioner

The learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in two FIRs filed by the same complainant, with ulterior motives. It is further contended that the Special Power of Attorney (SPA), which is alleged to have been forged and misused, has not been established as a forged document by any competent court of law. The second FIR was registered on the presumption that the SPA is forged, whereas the allegation of forgery has yet to be substantiated. Moreover, the complainant has not raised any issue regarding the alleged forgery of the SPA before this Court. In addition, the complainant has initiated a civil suit concerning the matter, and therefore, criminal proceedings should not be invoked to resolve a civil dispute. It is argued on behalf of the petitioner that there is no evidence to suggest that the father of the petitioner forged any signatures. According to the complainant's own version, the SPA was duly provided by him to the father of the petitioner, thus negating the need for any forgery. Furthermore, the offences under which the petitioner has been charged are triable by a Magistrate, and the allegations leveled against the petitioner are devoid of merit and lack substantive evidence.

On behalf of respondent-State and complainant.

The learned State Counsel, assisted by the counsel for the complainant, has argued that the father of the petitioner, with the intent to carve out colonies from the jointly owned land, forged a Special Power of Attorney (SPA) in the names of Poonam Garg and Ramesh Kumar Garg. This fraudulent SPA was subsequently misused by submitting forged documents to various authorities to secure authorization for carving out a colony from the joint property. Furthermore, it has

been alleged that Anil Kumar Tiwari, in collusion with the petitioner, unlawfully sold the complainant's share of the land without the requisite authorization or empowerment to do so. In order to facilitate the sale of the plots, Anil Kumar Tiwari and the petitioner utilized two distinct PAN cards, thereby defrauding the complainant and intentionally causing loss to the state exchequer. The complainant became aware of the forgery and misuse of the SPA only after filing FIR No. 28 dated 01.07.2023 (Annexure P-2). In the course of proceedings for anticipatory bail in CRM-M-46742-2023, titled **Vishal Tiwari vs. State of Punjab**, the petitioner submitted the forged SPA dated 08.06.2006, a document unknown to the complainant and his wife, as the wife of the complainant was in Canada at the time the SPA was executed and notarized in India. Anil Kumar Tiwari, along with his son Vishal Tiwari (the petitioner) and daughter Anjali Tiwari, unlawfully sold the plots carved out from the colony, forged the signatures of the complainant and his wife without their consent, and misappropriated the proceeds from the sale. The role of the present petitioner is critical, as he has been identified as a primary beneficiary of the funds obtained from the illegal sale of plots carved from the jointly owned land of Anil Kumar Tiwari, Poonam Garg, and Ramesh Kumar Garg.

In light of these allegations, the petitioner's financial transactions and his involvement in the fraudulent activities outlined above warrant further legal scrutiny.

Reply filed on behalf of the complainant is taken on record.

4. Analysis & Conclusion

Heard learned counsel for the respective parties.

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the

accused even without warrant. The court has extraordinary power to protect an innocent person. However, this power has to be exercised by the courts with due circumspection.

The pivotal issue, in any plea for grant of bail whether anticipatory bail or regular bail, is the liberty of an individual. Liberty occupies a place of pride in our society and jurisprudence. The framers of the Constitution hence provided *inter alia* in Article 21 of our Constitution that no person shall be deprived of his personal liberty except according to procedure established by law. The BNSS is one such procedural law which permits curtailment of liberty of antisocial and antinational elements. Hence while interpreting any aspect pertaining to bail, a Court ought to keep the above concept in cardinal focus.

The allegation against the petitioner is serious in nature and seems to be economic in nature, as huge money is involved in the said business. On perusal of status report filed by the respondent-State in CRM-M-46742-2023 wherein, it is stated that an amount of Rs. 15,64,833/- from the account of Usha Tiwari (wife of Anil Kumar Tiwari), after being closed, was deposited into the bank account of Vishal Tiwari (the present petitioner), account No. 0574000109049621. It is also on record that the petitioner, along with his mother, booked a flat with J.B.K. Developers Pvt. Ltd. in Noida, making a payment of Rs. 43,46,050/-.

Moreover, the antecedents of the petitioner are also not good, as he is already involved in another case of similar nature. The Apex Court in case **“Gudikanti Narasimhulu vs. Public Prosecutor, High Court of A.P.”; (1978) 1 SCC 240**, has already observed that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is

applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Keeping in view the nature, as also severity of allegations made against the petitioner, especially the fact that he is accused of forging the Special Power of Attorney and used the same before the various authorities, disentitles him for grant of bail. Hence, the present petition is dismissed.

22.01.2025

Sham

(SANDEEP MOUDGIL)
JUDGE

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