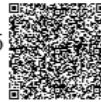


2025:PHHC:049995



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19808-2025
DECIDED ON: 09.04.2025

RAJWINDER KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Umesh Aggarwal, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under section 482 of BNSS, 2023 for grant of Anticipatory Bail to the Petitioner in FIR No. 187 Dated 11.09.2024 Under/ section 419/420/467/ 468/471/ 120-B IPC 1860, registered at Police Station Civil Lines, Amritsar.

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

"It is recorded that an application No. 321441-PGD dated 20.03.2024 by Harbhajan Singh s/o Late Tarlochan Singh r/o House No. 1115/9 Gali Nathe Kha Katra Khajana Amritsar through Post received at Police Station which is as follows:" At Service Deputy Commissioner Amritsar. Subject: Application against Harpal Singh s/o Santokh Singh R/o Sham Nagar Majitha Road Amritsar Mo.

No.9872613013 regarding misappropriate my property by making fake Power of Attorney in order to register FIR against him. Respected sir, it is requested that: I Harbhajan Singh s/o Tarlochan Singh r/o 1115/9, Nathi Kha Katra Khajana, Amritsar and declares the following affidavit that: 1) That I am a permanent resident of the above said address. 2) That our one area is situated in Village Miran Kot Khurd Tehsil District Amritsar bearing Khasra No: 5465 Voucher No: 2021/197/1/2522 Voucher No: 10/2/2022 Transfer Date: 15/6/2022 Harjinder Kaur Widow and Harbhajan Singh Son and Manjit Kaur Daughter of Tarlochan Singh son of Harsha Singh total area 785 sq through Record-of-Rights (Jamabandi) 2019-2020 holds the ownership, which copy of Jamabandi and sale deed is attached. 3) That I and my sister and mother have equal shares in the said property. 4) That a Power-of-Attorney has been made by fake Harjinder Kaur w/o Tarlochan Singh s/o Harsha Singh, fake Manjit Kaur s/o Late Tarlochan Singh, fake Harbhajan Singh s/o Tarlochan Singh R/o Mata Kola Ji Marg Tarn Tarn Road Amritsar in favour of Harpal Singh Sindhu Son of Santokh Singh Resident, Sham Nagar Majitha Road Amritsar of Dated: 10/3/2021. While I have never given any power of attorney in court. 5) That the said accused, accused Harpal Singh Sindhu has forged a power-of-attorney in the name of his wife fake Harjinder Kaur, Manjeet Kaur. Harbhajan Singh stood up 6) That the said land was inherited from my father, since my mother Harjinder Kaur passed away on 07/06/2021. Whose death certificate and Aadhaar card copy is attached. Please Action should be taken against the culprits and my life and property should be protected. I will be very thankful to you. Date:-19/3/2024.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present and the allegations against him are false as he never executed any such power of attorney or impersonated Harjinder Kaur. It is

pertinent to mention here that there is unexplained delay of 6 months in lodging the FIR as the alleged occurrence took place on 20.03.2024 and the FIR was got registered on 11.09.2024. Moreover the dispute is purely civil in nature. He undertakes on behalf of the petitioner that he is ready and willing to join the investigation.

Notice of motion.

On behalf of the respondent/State

Mr. Jastej Singh, learned Deputy Advocate General, Punjab, appearing on advance notice, accepts the same on behalf of the respondent/State and submits that there are direct allegations against the petitioner, Rajwinder Kaur, wife of Harpal Singh, that she impersonated herself as the wife of Tarlochan Singh on the basis of the said forged documents, a portion of the land was transferred in favour of Balwinder Singh vide registered sale deed dated 02.11.2021.

4. Analysis

In everyday terms, the principle of law dictates that bail is the general rule, while jail is the exception. However, this Court acknowledges that the power to grant or deny bail is extraordinary and must be exercised with caution. It is well-established that when considering a bail application (whether pre-arrest or regular bail), the Court must form a *prima facie* opinion as to whether reasonable grounds exist to support the accusation, or if the accusation is frivolous and baseless possibly made with the intention of harming or humiliating the individual, or falsely implicating them in the crime. This evaluation must be conducted in light of the self-imposed restrictions and the broader legal parameters outlined.

As per the allegations petitioner impersonated herself as wife of Tarlochan Singh and in furtherance of that a false and fabricated General Power of Attorney dated 10.03.2021 was fraudulently executed in favour of one Harpal Singh, son of Santokh Singh.

It is further alleged that the complainant never executed any such Power of Attorney dated 10.03.2021, and that the aforementioned individuals, by falsely impersonating his family members and himself, created forged documents with the intention of unlawfully usurping the property which was inherited by him from his late father.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail

may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section 482 BNSS is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in **“State vs. Anil Sharma”; (1997) 7 SCC 187**, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible

police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Keeping in view the fact that the alleged forged and fabricated documents were created with the intent to effect the transfer of valuable immovable property, which was subsequently further alienated, thereby causing substantial monetary loss and mental harassment to the complainant and his family, and that the petitioner is alleged to be one of the impersonators involved in the execution of the said forged documents and a participant in the criminal conspiracy, therefore, this Court is of the view that his custodial interrogation is required.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

09.04.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

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