

2025.PHHC.004291



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-64372-2024
DECIDED ON: 14.01.2025

INDERJEET AHUJA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Jhamb, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 482 of BNSS, 2023, has been invoked seeking anticipatory bail to the petitioner in case FIR No. 499, dated 30.08.2024, under Sections 420 and 120-B of Indian Penal Code, 1860, registered at Police Station Surajkund, Faridabad.

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

“To, Commissioner sir, Sector-21C, Faridabad, Subject: Complaint for forgery, fraud, Sir, it is requested that I Kavita Lodwal, resident of H. No. 542-543, Flat No. B-1, 1st Floor, Bank Colony, Devli Village, near Shiv Mandir, Devli, South Delhi, Delhi is resident of above address and I bought flat No. 971, Type-3, SPS Scheme, Sector-21 C, Housing Board Colony, Faridabad located at second floor, according to documentation Pankaj Aggarwal and Vikas Aggarwal sold it to Shalu Ahuja, w/o Inderjeet, Shalu Ahuja got executed power of attorney regarding the second floor in favour of Vikram Dhawan, s/o Sh. Raj Dhawan, r/o H. No. 78, Sector-10, Housing Board Colony, Faridabad on 24.09.2010, then Vikram got the said property in his name, Vikram Dhawan gave the said property

to Ujjwal Dhawan, Ujjwal Dhawan during his life vide will and power of attorney was executed in favour of Prahalad Gautam and on the basis of this documentation, Prahalad Gautam sold the second floor to me and I took the possession of it, then I applied for loan in HDFC Bank and HDFC Bank sanctioned me a loan of Rs. 27 lakhs, the entire procedure of taking the loan was done by HDFC Bank manager through his lawyer and he mentioned in the documents that there is no loan on this property and it is clean. Then after taking the loan, the sale deed was made in my favour. After the registry, I was comfortably taking the rent of the said property, in may I received one notice that there was loan on this property which Shalu Ahuja had taken which she did not repay and bank has auctioned Plat No. 971, Type-3, SFS Scheme, Sector-21, Housing Board Colony, Faridabad. I have come to know that a person namely Pushpinder has bought the said flat No. Flat No. 971, Type-3, SFS Scheme, Sector-21, Housing Board Colony, Faridabad from PNB Bank, I also came to know that PNB Bank Manager Prithvi Ranveer and Pushpinder conspired and got the auction done and price of flat from ground to sky is in crores, if the bank had sold only the flat in Shalu's possession, the loan amount would have been paid but all of them conspired and hatched the conspiracy to grab my flat, Shalu Ahuja knew that there was a loan on this property still she sold the property to me, Thereafter, HDFC Bank, its lawyer and manger of PNB Bank alongwith Pushpinder Sharma bought the flat at a cheap price, and got the property fraudulently, Hence I request you to take a strict action and provide justice to me, I would be grateful, SD/- dated 3/6/29 Applicant Kavita Lodwal, resident of H. No. 542-543, Flat No. B-1, 1st Floor, Bank Colony, Devli Village, near Shiv Mandir, Devli, South Delhi, Delhi”

3. **Contentions**

On behalf of the petitioner

The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case with a delay of over 7 months in filing the FIR. He further contends that the petitioner did not execute any agreement in favor of the complainant nor had he received any amount from the complainant. In fact, the complainant purchased the said flat from one Prahalad Gautam. It is argued on behalf of the petitioner that the matter is of a purely civil nature. The petitioner assures this Court that he is ready and willing to cooperate with the investigation.

On behalf of the respondent/State/

Reply filed by way of an affidavit of Narender Kumar, HPS, Assitant Commissioner of Police, EOW, Faridabad, is taken on record.

Learned State counsel asserts that the complainant applied for a loan from HDFC Bank, which was sanctioned for Rs.27,00,000/- for the purpose of purchasing the flat in question bearing No.971 type-3, SPS Scheme, Sector 21-C, Housing Board Colony, Faridabad. Later on complainant came to know that one Pushpender had bought the said flat in an auction conducted by Punjab Nation Bank.

Learned State counsel would contend for dismissal of the present petition on the strength that the petitioner was well aware of the mortgage of the property in question, who alongwith his wife is signatory to the document for purchase from Punjab National Bank at an earlier occasion on 11.04.2008, but went on to seek sale of the same property to the complainant. He further contends that the petitioner is a habitual offender, as he is involved in another case bearing FIR No.446/2024, under Sections 420, 120-B, registered at Police Station Surajkund, Faridabad.

4. Analysis

The present case involves allegations of offences under Sections 420 and 120B of the IPC against the accused persons, including the petitioner. It is alleged that the petitioner, along with his wife, conspired to deceive the complainant by orchestrating a series of transactions to sell a property that had already been mortgaged with the bank for a loan of Rs. 41 lakhs. The property was subsequently auctioned by the bank. Based on the investigation so far, a prima facie case has been established against the petitioner. Additionally, the petitioner

has not approached this Court with clean hands, as he is involved in another case of similar nature.

As far as the contention of the petitioner that he has not received any amount or is not the beneficiary of the alleged transaction, is concerned, the petitioner being fully aware of the fact that property is under mortgage, has availed the loan facilities from ICICI in the year 2008 and thereafter from PNB, as is evident from the perusal of para 4 of the affidavit of the State. The execution of the General Power of Attorney in favor of Ujjwal Dhawan and Prahlad Gautam demonstrates a deceitful intent to facilitate the sale of the property, a scheme orchestrated solely by the petitioner. Therefore, the argument that the petitioner did not benefit from the transaction does not hold merit and fails to convince the Court.

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 438 Cr.P.C., 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 ensconded 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 circumstances of instant case, the role attributed to the petitioner and bearing in mind the law enunciated as discussed hereinabove, this Court is of the view that his custodial interrogation is required to collect the material evidence, which may further enable the Investigating Agency to unearth the ramifications involved in the present case and that will ultimately help the Investigating Agency to reach to a logical conclusion, this Court does not find any merit in the present petition, hence the same stands dismissed with no order as to costs.

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.

(SANDEEP MOUDGIL)
JUDGE

14.01.2025

Meenu

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