

2023 SCC OnLine P&H 728

In the High Court of Punjab and Haryana at Chandigarh
(BEFORE VIKRAM AGGARWAL, J.)

Ram Niwas ... Petitioner;

Versus

State of Haryana ... Respondent.

CRM-M-30951-2023

Decided on June 27, 2023, [Reserved on 21.06.2023]

Advocates who appeared in this case:

Mr. Ram Kumar Saini, Advocate for the petitioner.

Mr. Rajiv Goel, DAG, Haryana.

Mr. K.D.S. Hooda, Advocate for the complainant.

The Judgment of the Court was delivered by

VIKRAM AGGARWAL, J. (Oral):— The present petition has been preferred under Section 438 of the Code of Criminal Procedure (for short "Cr.P.C.") for the grant of pre-arrest bail to the petitioner in case FIR No. 594 dated 09.07.2022 registered under Sections 467, 468, 471, 406 419, 420 and 120-B Penal Code, 1860 at Police Station Azad Nagar, Hisar, District Hisar.

2. On a complaint submitted by one Sushila Devi, the present FIR was registered against six persons including the present petitioner. It was alleged by Sushila Devi that she had a plot bearing No. K-45 measuring 160 square yards in Model Town Extension, Hisar which had been allotted by the Hisar Shanti Cooperative Building Society Ltd. on 11.11.2006. It was alleged that when she try to raise construction over the plot on 05.04.2022, some persons came to the site and claimed that they were the owners of the plot. When the matter went to the police, the police, after some preliminary investigation apprised her that her plot had been sold twice. The present petitioner, who according to the complainant, was the head of the society did not give her the documents with regard to the plot when they demanded the same. During investigation, it was found that the present petitioner who was the head of the society along with other persons had transferred two plots, one belonging to the present petitioner and the other belonging to one Shyam Lal by way of impersonation and forgery. The modus was that applications allegedly moved by Sushila Devi and Shyam Lal submitting that they had lost their allotment letters, were prepared by the present petitioner and the co-accused by forging their signatures. Duplicate allotment letters were issued. Permission was then sought to

sell off the plots and subsequently the plots were sold by way of impersonation and forgery.

3. Learned counsel for the petitioner strenuously urged that the petitioner has been falsely implicated. He submitted that the petitioner had no role to play since he had no concern with the society and that his son namely Naresh Kumar was the Vice-President of the society. It was submitted that co-accused Banshi Lal had moved a petition for the grant of pre-arrest bail before this Court and the same was allowed. Reliance was placed upon the order dated 03.02.2023 passed by a Co-ordinate Bench in CRM-M-56248-2022 titled as "*Banshi Lal v. State of Haryana*" Learned counsel further contended that even otherwise the plots have now been restored to the original owners after a compromise having been arrived at between the parties. Learned counsel submitted that the petitioner would join investigation and co-operate with the same and custodial interrogation is not required.

4. On the other hand, learned counsel representing the State of Haryana who was present on advance notice and Mr. K.D.S. Hooda, Advocate who put in appearance on behalf of the subsequent purchasers of the plots submitted that no case for the grant of pre-arrest bail is made out. It was submitted that the present petitioner was the in-charge of the society and that he had, in fact, by way of an affidavit undertaken to return the money to the subsequent purchasers. Learned counsel submitted that custodial interrogation would be essential.

5. I have given my thoughtful consideration to the submissions made by learned counsel for the parties. The allegations are indeed serious. Two plots were transferred repeatedly by way of impersonation and forgery. The petitioner is said to have been the in-charge of the society and is said to have been actively involved in the commission of the offences. No document has been placed on record to show that the petitioner had no concern with the society or that his son was the Vice-President of the said society. Merely because Banshi Lal was granted anticipatory bail by this Court would not mean that the present petitioner is also to be granted anticipatory. In the considered opinion of this Court, granting pre-arrest bail in such cases would cause prejudice to the full, free and fair investigation which would lead to miscarriage of justice. Here, this Court is reminded of the factors that should be kept in mind while granting anticipatory bail. The Constitution Bench of the Hon'ble Supreme Court of India laid down these factors in the case of *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 593 and were reiterated by the Hon'ble Apex Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694. As per the Hon'ble Apex Court, the following factors and parameters are to be taken into consideration while dealing with the

anticipatory bail applications: —

- (i) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehend before arrest is made.*
- (ii) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence.*
- (iii) *The possibility of the applicant to flee from justice.*
- (iv) *The possibility of the accused's likelihood to repeat similar or the other offences.*
- (v) *(Where the accusations have been made only with the object of injuring or humiliating the applicant by affecting a very large number of people.*
- (vi) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- (vii) *The courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern.*
- (viii) *While considering the prayer for grant of anticipatory bail a balance has to be struck between two factors namely no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.*
- (ix) *The Court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant.*
- (x) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*

6. Keeping in view the facts and circumstances as also the factors which have to be taken into consideration while dealing with anticipatory bails, this Court does not find it to be a case where the concession of pre-arrest bail should be extended.

7. In view of the same, finding no merit in the present petition, the same is dismissed.

this text must be verified from the original source.