

2023 LiveLaw (SC) 514 : 2023 INSC 612

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SURYA KANT; J., C.T. RAVIKUMAR; J.
CRIMINAL APPEAL NO. 1793 OF 2023; July 07, 2023
Pratibha Manchanda & Anr. *versus* State of Haryana & Anr.**

Code of Criminal Procedure, 1973; Section 438 - Anticipatory Bail - The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome. (Para 19)

Land scams - Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance free status. Organized criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress. (Para 25)

[Arising out of Special Leave Petition (Crl.) No.8146 2023] [Arising out of Special Leave Petition (Crl.) D.No.20936 of 2022]

(Arising out of impugned final judgment and order dated 31-05-2022 in CRM-M No.24093/2022 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) Mr. Saket Sikri, Adv. Mr. Gautam Khazanchi, Adv. Mr. Ajaypal Singh Kullar, Adv. Mr. Vikalp Mudgal, AOR

For Respondent(s) Ms. Bansuri Swaraj, A.A.G. Mr. Nihar Dharmadhikari, Adv. Dr. Monika Gusain, AOR Mr. Raktim Gogoi, Adv. Mr. Kartikeya Singh, Adv. Mr. S Vinod, Adv. Mr. Shivam Pal Sharma, Adv. Mr. Rakesh Kumar Singh, AOR

J U D G M E N T

Surya Kant, J.

1. Application seeking permission to file the SLP is allowed. Leave Granted.
2. The instant appeal arises from a judgment of the High Court of Punjab and Haryana at Chandigarh (hereinafter, 'High Court') dated 31.05.2022, whereby the High Court allowed the petition filed under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter, 'Cr.P.C') and granted anticipatory bail to Respondent No. 2 in FIR No. 113 of 2022, dated 16.03.2022, registered at PS Badshahpur, district Gurugram, under Sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (hereinafter, 'IPC').

A. FACTS

3. The abovementioned FIR was lodged by the Appellants against Respondent No. 2 and other co-accused individuals, namely, Shel Narang, Bhim Singh and Vinod. According to the contents of the FIR, the Appellants are senior citizens who were owners and had possession over the land bearing rect. No. 55, Killa No. 3/1 (7-9), 4/1 (7-13), measuring 15 Kanal 2 Marla, situated within the revenue estate of Village Begampur Khatola, Tehsil Kadipur, District Gurugram (hereinafter, 'Subject Land') for over a period of 30 years. The Appellants claim that they never sold the Subject Land to anyone nor have they ever executed any power of attorney (hereinafter, 'GPA') in favor of any third party. The area has, in their version of events, always been unequivocally under their possession and has never been ceded in any form or fashion to people outside the family.

4. On 28.02.2022, Appellant No. 2 went to Patwar Bhawan, Gurugram to obtain revenue papers for the Subject Land. He discovered there only that a person named Bhim Singh Rathi had approached the halqa patwari to sanction mutation of the aforementioned land. The application for mutation was, as per the Appellants, based on a forged and fabricated sale deed bearing vasika No. 11493 dated 24.02.2022 (hereinafter, '2022 Sale Deed'). After looking into the matter further, Appellant No. 2 learned that the said sale deed was registered in the office of Sub-Registrar Kadipur, District Gurugram and was executed by Respondent No. 2. The execution in question was based on yet another, purportedly, forged and fabricated GPA bearing Vasika No. 13907 dated 18.09.1996 (hereinafter, '1996 GPA'), registered in the office of Sub-Registrar-V, South East Delhi.

5. The Appellants, as alluded to earlier, have adopted the stance that they never executed or registered any GPA in favor of Respondent No. 2, nor are they even acquainted with him in any form or fashion. Instead, both the 1996 GPA and the 2022 Sale Deed were completely fraudulent documents created by Respondent No. 2 and the remaining co-accused named in the FIR, in collusion with other officials at the Sub-Registrar's office. These actions were carried out in complete subterfuge and without any involvement of the Appellants.

6. The Appellants claim that they are in possession of the original sale deed for the Subject Land, and a true copy of it was attached to the complaint. Upon examining the 2022 Sale Deed, it was apparent to them that the accused had failed to provide a PAN Number, which is mandatorily required for a valid sale deed. Furthermore, there was no mention of the 1% amount of Tax Deducted at Source (hereinafter, 'TDS') being deposited, which also forms part of the requirements for execution and registration of a sale deed.

7. The complaint also mentioned the current market value of the Appellants' land, measuring 15 Kanal 2 Marla, as being approximately not less than Rs. 50 crores. However, in the 2022 Sale Deed, the sale consideration was shown as an abjectly low and meager amount of Rs. 6,60,62,500/-, which was significantly below its actual asking price. Moreover, the Appellants had not received even this miniscule amount even if the 2022 Sale Deed was hypothetically considered to be valid. Thus, this document was clearly created by Respondent No. 2 and the co-accused in collusion with the witnesses, the scribe, and officials of the Sub-Registrar Tehsil Kadipur, District Gurugram, with the unholy intention to wisk the property away from the the complainants and place it under the possession of the accused.

8. Accordingly, the First Information Report was registered at Police Station, Badshahpur, Gurugram, and an investigation was initiated. Respondent No. 2, fearing

arrest if he were asked to appear before the Investigating Officer, filed an application for Anticipatory Bail before the Additional Sessions Judge, Gurugram.

9. The Additional Sessions Judge, Gurugram, dismissed Respondent No. 2's application for anticipatory bail in an order dated 23.05.2022, while observing that:

i. Respondent No. 2 was accused of allegedly forging a GPA and executing the 2022 Sale Deed. The original 1996 GPA was still to be recovered by the police. Several questions pertaining to the whereabouts of the 1996 GPA, the execution of the sale deed, the payment of sale consideration, sanctioning of the mutation, and the relationship between Respondent No. 2 and the Appellants, were all to be ascertained;

ii. The allegations against Respondent No. 2 were serious, and filing a civil suit did not absolve them of criminal liability. Anticipatory bail was to be granted only in exceptional circumstances, as a person under pre-arrest bail may not disclose all the relevant facts under questioning, due to the safeguard provided under Section 438 of the Cr.P.C. Custodial interrogation of Respondent No. 2 was necessary for a thorough investigation, given all the outstanding points of inquiry that remained pending.

10. Aggrieved, Respondent No. 2 filed an application for Anticipatory Bail before the High Court. The High Court, vide impugned order dated 31.05.2022, allowed the application and granted him Anticipatory Bail. The High Court, *inter alia*, observed that:

i. The dispute involves the validity of the 1996 GPA and the misappropriation of the purported sale consideration. Civil suits have been filed regarding the ownership and possession of the property already and a handwriting expert's report was crucial in determining the authenticity of the signatures;

ii. The High Court acknowledged the pendency of ongoing civil suits and suggested that the validity of the 1996 GPA's execution could be determined by the civil court, and did not need to be a determinative factor in the proceedings for anticipatory bail; **iii. *Prima facie***, it seemed that the involvement of the criminal justice system, initiated by the Appellants, might be an attempt to settle certain transactions and resolve ongoing disputes between them. In this background, to ensure that justice was done for both the Appellants and Respondent No. 2, directions were issued for them to provide their specimen signatures. The handwriting expert was tasked with comparing the writings and signatures to assess their similarity.”

11. The High Court ordered that no arrest of Respondent No. 2 would be carried out as long as he provided personal and surety bonds of Rs. 2 lakhs each to the satisfaction of the investigating officer. While extending these protections, Respondent No. 2 was also instructed to cooperate with the investigation whenever required and to give an undertaking to avoid tampering with prosecution evidence, or influence any of the witnesses. Furthermore, a deposit of of Rs. 1.50 Crores was to be submitted before the concerned Magistrate which would serve as victim compensation and be disbursed based on the outcome of the trial.

12. The Appellants being aggrieved at the grant of anticipatory bail, are before us.

B. CONTENTIONS

13. Shri Saket Sikri, learned counsel for the Appellants, vehemently contended that the High Court acted on the erroneous assumption that the alleged 1996 GPA in favor of Respondent No. 2 is genuine. The original copy of 1996 GPA has not been recovered by the police till date, and hence, custodial interrogation is required. Furthermore, the High

Court failed to consider that despite the 1996 GPA being executed in favour of Respondent No. 2, he applied for its certified copy only in February 2022, i.e., 26 years later, whereas he should have possessed the original already if his claim is to be *bona fide*. The present case is one where Respondent No. 2, in collusion with other accused persons, has carried out an elaborate fraud against the Appellants, who are vulnerable owing to their age and the NRI status. Additionally, the signatures used by Appellant No. 2 during the period between 1990-2000 are dissimilar, unlike and non-identical from those inscribed on the alleged GPA dated 18.09.1996. In addition, the consideration of the alleged sale deed - Rs. 6.60 crores - is far less than the market value of the Subject Land, which is stated to be Rs. 50 crores.

14. Ms. Bansuri Swaraj, learned Additional Advocate General appearing on behalf of Respondent No. 1 – State of Haryana, strongly contested the grant of anticipatory bail to Respondent No. 2 and supported the stand taken by the Appellants. It was argued that a strong prima facie case has been made out against Respondent No. 2, and that his custodial interrogation is vital to the objective of unearthing the larger conspiracy.

15. Shri Maninder Singh, learned Senior Counsel representing Respondent No. 2, vigorously defended High Court's view and asserted that each and every allegation, contention, and submission made by the Appellants was factually and legally incorrect. Learned Senior Counsel argued that Respondent No.2 had originally purchased the land in question from the Appellants in the year 1996. However, at that time, there was a third-party lease existing on the land. In order to address this, the Appellants executed 1996 GPA, which was duly registered at the office of the Sub-Registrar, Kalkaji, Delhi. This GPA has not been disputed in any court of law and has not been challenged by the Appellants up to the time the civil suits were filed, clearly showing that the contestation of its validity was merely an afterthought. Respondent No. 2 had full authorization through the 1996 GPA to execute a registered deed of conveyance for the property in question and receive consideration for it. On 24.02.2022, Respondent No. 2 sold the land through the exercise of power vested in him by virtue of the 1996 GPA. However, the purchasers have not been included as parties before this Court. The authenticity of the GPA had been verified according to the report of the Sub Registrar, Kalkaji, dated 13.02.2022 and the sale of the land only took place after the receipt of the verification report. It was only after this that the Appellants began threatening Respondent No. 2 and the purchasers, and subsequently filed the civil suits contesting the validity of the GPA. Furthermore, the High Court has granted anticipatory bail to Respondent No. 2 subject to strict conditions such as providing specimen signatures to the Investigating Officer and depositing Rs. 1.50 crores. The police have also obtained records from the Sub Registrar's office and Respondent No. 2 has complied with all the conditions imposed on him by the High Court.

C. ANALYSIS

16. It goes without saying that the alleged offences of forging documents for transferring ownership of land worth crores of rupees are grave in nature. Hence, while it is extremely important to protect the personal liberty of a person, it is equally incumbent upon us to analyze the seriousness of the offence and determine if there is a need for custodial interrogation.

17. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra***¹, this Court carefully considered the principles established by the Constitution Bench in ***Gurbaksh Singh***

¹ (2011) 1 SCC 694.

Sibbia v. State of Punjab² case. After a thorough deliberation, this court arrived at the following conclusion:

"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended 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 other offences;*
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- (vi) Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people.*

xxx xxx xxx"

18. In **Sushila Aggarwal v. State (NCT of Delhi)**³, the Constitution Bench reaffirmed that when considering applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.

20. Adverting to some of the undisputed facts in this case, it is clear that the 1996 GPA has not yet seen the light of the day. No indication regarding the location of the original document has been placed before us. In light of Respondent No. 2's own contention, what transpired in 1996 was the sale of the Subject Land through the GPA. Upon reviewing a copy of the alleged 1996 GPA presented to the court, the Appellants relinquished all crucial rights pertaining to the Subject Land. These rights include possession of the land, handling water, sewer, electricity, power connections, and other services related to the property, paying lease payments and other dues, making additions or modifications to the existing structure with required permissions, renting out the land, issuing receipts, and managing tenant-related matters. Furthermore, the Appellants granted authority for selling, disposing, or transferring the land, entering into agreements, and receiving consideration on behalf of the principal. However, regardless of obtaining all the rights over the Subject Land, Respondent No. 2 does not appear to have ever informed the Revenue/local authorities that he had purportedly 'purchased' the Subject Land through a GPA. The ownership of the land always remained in the name of the Appellants in the revenue record

² (1980) 2 SCC 565.

³ (2018) 7 SCC 731.

and no application for change of mutation, etc. was moved by the 2nd Respondent. We are informed that at a very belated stage, after the execution of the alleged 1996 GPA, a portion of the Subject Land was acquired by the Government and compensation in this regard was paid to the Appellants. Respondent No. 2 neither objected to the payment of such compensation nor asserted his title over the land, which he normally would have done had he possessed any rights over it. It would be incongruous to accept transfer of ownership rights in an immovable property merely on execution of a power of attorney.

21. We must keep in mind that the Subject Land is a prime property situated in the National Capital Region. Even in the year 1996, its value must have been quite significant. The 2nd Respondent has so far not been able to show payment of any consideration to the Appellants in the year 1996. The original GPA, as we have noted on multiple occasions, is conspicuous by its absence. A certified copy of this GPA is said to have been relied upon to execute the disputed sale deed. We fail to understand or comprehend as to how a *bona fide* purchaser could pay crores of rupees as sale consideration to a person who neither possesses documents showing ownership and title nor has original GPA of the true owner(s) of the property being sold. The fact that the sale deed was allegedly executed without mentioning the PAN Number or without deducting TDS, underlines the dubious nature of this transaction. We are equally intrigued at the behaviour of the Registering Authorities and their acceptance of the conveyance deed in the absence of these formalities being completed. The Sub-Registrar and his officials were obligated to verify the ownership rights before registration of the sale deed. As per the Appellants' claim, the prior original sale deeds of the land are still in their possession. The fact that the vendee agreed to pay such massive sums of money to Respondent No. 2 without obtaining the original records as of now casts a shadow over the legitimacy of the transaction.

22. It warrants mention here that the Appellants are elderly couple. Being NRIs, the majority of their time is spent abroad. They have stated that they were not in India at the time of execution of disputed sale deed. The Appellants' claim that the market value of the land is not less than Rs. 50 crores, although not got verified yet by a valuation expert, does not appear to be far off the mark. There is a serious allegation of under-valuation of the land at the time of execution of the allegedly fraudulent sale deed. The contention that the consideration of Rs.6.60 crores is much less than the market value of the Subject Land, thus, also requires a deeper probe.

23. We are not oblivious of the fact that Respondent No. 2 is said to have applied for the certified copy of the 1996 GPA in February, 2022 after a period of 26 years since its execution. It is also unclear why, given that when the Subject Land is situated in Gurugram District, the GPA in relation to the property was registered in Kalkaji, New Delhi. It raises some suspicion regarding the genuineness of the GPA. There is, thus, overwhelming and clear cut prima facie evidence to indicate that the version of events provided by Respondent No. 2, the buyers of the property, and the Sub Registrar, should be viewed with scepticism. These parties, prima facie, appear to be acting in concert with each other and might be hands in glove, with the ulterior motive of duping the absentee land-owners. This angle requires thorough consideration by the investigating authorities. The Appellants have seemingly fallen prey to a well-orchestrated conspiracy hatched to rob them of their highly valuable property. In such cases where the victims of a crime, on account of their old age and geographical distance, are unable to secure justice on their own, it falls upon Courts and the State to carry out their solemn duty to ward off injustice and restore the faith of one and all in the rule of law.

24. All these material facts which go to the root of the matter were unfortunately not brought to the notice of the High Court. Had there been proper assistance, the High Court also would have given a free hand to the investigating agency to investigate the role of Respondent No. 2, the vendees, the Sub Registrar and other officials of the Registering Authority, so as to uncover the collusion, connivance and conspiracy, if any, engineered to commit fraud at the expense of the Appellants.

25. Land scams in India have been a persistent issue, involving fraudulent practices and illegal activities related to land acquisition, ownership, and transactions. Scammers often create fake land titles, forge sale deeds, or manipulate land records to show false ownership or an encumbrance-free status. Organized criminal networks often plan and execute these intricate scams, exploiting vulnerable individuals and communities, and resorting to intimidation or threats to force them to vacate their properties. These land scams not only result in financial losses for individuals and investors but also disrupt development projects, erode public trust, and hinder socio-economic progress.

26. While we do not wish to comment further on this issue, we believe it is necessary to foil any trace of organised crime perpetrated by land mafia, through an unimpaired and unobstructed investigation.

27. It is inarguable that the cancellation of bail should be done only for substantial and compelling reasons, however, setting aside an erroneous bail order is altogether different from cancelling bail. This Court does not intend to interfere with the judicial discretion exercised by the High Court in granting bail to an accused as a standard practice. However, it is essential to ensure that all the material facts are brought on record and thereafter only the discretionary jurisdiction is exercised in accordance with the fundamental principles of anticipatory bail laid down in various decisions over time by this Court.

28. It is immaterial that the genuineness of the 1996 GPA is already sub-judice before the Civil Court in the civil suits pending between the parties. The appellants, owing to their age and residential status, cannot be expected to await indefinitely for the outcome of these civil proceedings. Regardless, the pendency of these cases does not estop the issues of forgery and fabrication being considered in the course of criminal investigation. The facts of the case speak for themselves and an element of criminality cannot be ruled out at this stage. Whether or not the alleged offences were committed by Respondent No. 2 and his co-accused in active collusion with each other can be effectively determined by a free, fair, unhampered and dispassionate investigation. In the peculiar facts and circumstances of this case, custodial interrogation of not only Respondent No. 2 but all other suspects is, therefore, imperative to unearth the truth. Joining the investigation with a protective umbrella provided by pre-arrest bail will render the exercise of eliciting the truth ineffective in such like case. We are, as mentioned, also skeptical, suspicious and incredulous about the verification process of the 1996 GPA carried out by the SubRegistrar, Kalkaji, New Delhi. Hence, the conduct of the officials of Sub-Registrar Office, Kalkaji, New Delhi is also required to be examined to take the investigation to its logical conclusion.

29. It is clarified that the observations made hereinabove are prima facie in nature and shall not be taken as final conclusions.

D. CONCLUSION

- 30.** In light of above discussion and without expressing any views on the merits of the case, the appeal is allowed and the impugned order dated 31st May, 2022 passed by the High Court granting pre-arrest bail to Respondent No. 2 is hereby set aside.
- 31.** Given the facts and circumstances of this case, we expand the scope of inquiry in these proceedings and direct the Commissioner of Police, Gurugram to constitute a Special Investigation Team (SIT) to be headed by an officer not below the rank of Dy. Superintendent of Police along with two Inspectors as its members. The SIT shall take over the investigation forthwith. The SIT shall have the liberty to subject Respondent No. 2, the vendee(s), the Sub Registrar/officials, or other suspects to custodial interrogation to arrive at a definite conclusion, strictly in accordance with law.
- 32.** In case the vendees, the officers/officials of the Registering Authority have secured anticipatory bail from Sessions Court/High Court, the SIT shall be at liberty to seek suitable modifications to such orders so that no impediment is caused in carrying out a fair and free investigation.
- 33.** No interlocutory/interim order passed by the Civil Court shall obstruct the ongoing investigation. The Civil Court shall not, from this point forth, pass any such order in pending civil suits which may hamper the ongoing investigation.
- 34.** The SIT shall conclude the investigation as early as possible and not later than two months from the date of this order.
- 35.** The Commissioner of Police, Gurugram shall be personally responsible for monitoring the day to day investigation.
- 36.** The authorities of NCT of Delhi shall extend full cooperation in the matter of verification of the genuineness of the GPA alleged to have been registered in the office of Sub Registrar, Kalkaji, New Delhi in the year 1996.

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