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Sumedh Singh Saini v. State of Punjab

Present: Mr. Mukul Rohatgi and Mr. APS Deol, Senior Advocates with Ms. Misha Rohatgi, Advocate for the petitioner.
Mr. P.Chidambaram, Senior Advocate with
Mr. Sartej Singh Narula, Special Public Prosecutor for the State of Punjab.
Ms. Diya Sodhi, Assistant Advocate General, Punjab.

[1] The matter is taken up for hearing through video conference due to COVID-19 situation.

[2] The prayer in the present petition is for grant of anticipatory bail in FIR No. 13 dated 2.8.2021, under Sections 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988 [as amended Prevention of Corruption (Amendment) Act, 2018] and Sections 109 and 120-B IPC, registered at Police Station Vigilance Bureau, Phase-I, Punjab at Mohali, District SAS Nagar.

Facts of the case

[3] The present FIR arises from vigilance enquiry No. 3 dated 17.12.2020. The enquiry was initiated against Nimrat Deep Singh, Executive Engineer, PWD (B&M) Department [hereinafter referred to as 'A1'] and his father-Surinderjit Singh Jaspal [hereinafter referred to as 'A2'], retired Lecturer from Government College Gurdaspur. The basis of enquiry was amassing of disproportionate assets by A1 than his known sources of income. There were thirty-five properties owned by A1 and his family. They were having twenty-two bank accounts with balance of more than Rs.4,80,00,000/-, fixed deposits of more than Rs.11,18,00,000/- and

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foreign currency of about Rs.2,12,00,000/-, amount of Rs.10,00,00,000/- was spent through bank on different expenditures and some of the properties were exchanged. A2 sold the land to WWICS Estates Pvt. Ltd. (hereinafter referred to as 'WWICS') showing himself to be the owner, whereas the land was in the name of Surinderjit Singh and Sons (HUF) through Karta-Surinderjit Singh Jaspal. During the probe in FIR No. 11, dated 17.09.2020, it was revealed that A2 purchased House No. 3048, Sector 20-D, Chandigarh with the money received from WWICS. The allegations are that the sale consideration was less than the Collector's rates fixed. After demolition, the house was re-constructed. For re-construction, the amounts received from WWICS and from the petitioner from August, 2018 to September, 2019 were utilized.

[4] As per A2, the petitioner was residing in his house as a tenant at the first floor. There was rent agreement dated 15.10.2018. The agreement was for eleven months. Monthly rent was Rs.2,50,000/-. The tenant had to deposit Rs.40,00,000/- as security and Rs.5,00,000/- as two months advance rent. The rent agreement was to expire on 14.9.2019 and in case of failure of the tenant to vacate the house, he was liable to pay double the rent. As per the contents of the FIR, Rs.6,40,00,000/- were transferred by the petitioner through various transactions in favour of his landlord. A1 and A2 produced an agreement to sell dated 2.10.2019. The agreement was on plain paper and unregistered. The sale consideration fixed was Rs.10,25,00,000/-. The petitioner had paid Rs.40,00,000/- through RTGS, details mentioned in the agreement to sell. The petitioner had to pay Rs.5,12,50,000/- before 31.3.2020 including the earnest money.

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The balance amount was to be paid before registration of the sale deed. The date fixed for registration of the sale deed was on or before 2.10.2021. According to the FIR, amount of Rs.75,00,000/- was transferred back from the seller to the petitioner through RTGS in September, 2020.

[5] It would be appropriate to note here that FIR No. 11 dated 17.9.2020 was registered against WWICS at Police Station, Vigilance Bureau, Flying Squad Police Station at Mohali and the house in question is attached vide court's order dated 16.7.2021. The petitioner has been directed to deposit the rent in Government treasury.

[6] On rejection of anticipatory bail, the petitioner is before this Court.

Arguments on behalf of the petitioner

[7] Mr. Mukul Rohatgi, learned senior counsel appearing on behalf of the petitioner submits that the petitioner during his service period had a tenure in the Vigilance Bureau and number of criminal cases were registered against members of the political party. The petitioner is a victim of political vendetta and is being targeted by getting involved in one after another FIR, this is the fourth FIR. As is apparent from the facts that the property in question is in Chandigarh, the financial transactions are in Chandigarh but the FIR is registered at Mohali.

[8] The contention is that in all earlier FIRs, the petitioner got protection either from this Court or the Apex Court. To substantiate the contention of political vendetta, it is submitted that in the first FIR i.e. No. 77 dated 6.5.2020, offence under Section 302 IPC was added in spite of being second FIR on the same set of facts after delay of almost 29 years.

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[9] The second FIR bearing No. 129 dated 7.8.2018 was registered at Police Station City Kotkapura, District Faridkot. The investigation and supplementary challan including one against the petitioner was set aside by the High Court and the State Government was directed to constitute a Special Investigation Team.

[10] The third FIR was No. 130 dated 21.10.2015 registered at Police Station Bajakhana, District Faridkot. The petitioner was nominated by way of third supplementary challan after 5 years of registration of the FIR. Anticipatory bail was granted by this Court.

[11] The contention is that the petitioner had a meritorious tenure in his service. He is categorized as Z-plus protectee. He has eminent threats to his life from anti-social elements and terrorists. There is no chance of his absconding. It is argued that after the retirement of the petitioner with threat perception and having Z-plus protection, it was difficult for him to find a house on rent. It was the result of pressing needs that the petitioner agreed to pay heavy amount of security in advance and exorbitant rent for getting an accommodation in Chandigarh. The argument is that all the transactions pointed out in the vigilance enquiry or in the FIR are banking transactions. The petitioner in the pleadings has explained the source of finances which are also through banking channels. For example, an amount of Rs.1,56,00,000/- was received as his share through banking channel from Malini Buildwell Construction Pvt. Ltd., New Delhi for developing his ancestral house at New Delhi. The agreement to sell was entered with Ravi Goel for his ancestral property in village Sohana and an amount of Rs.5,50,00,000/- as part payment was received. The payments were through

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RTGS, NEFT or by way of cheque. Similarly, the petitioner sold a flat in Shimla and also executed a lease deed for a property in New Delhi getting monthly rent of more than Rs. 4 lakhs.

[12] Mr. Rohatgi further argues that the petitioner was facing litigation in various cases. Payment of 50% of the sale consideration for the house in question was to be made but there was an excess payment. To meet the pressing financial needs for defending himself in the litigation, Rs.75,00,000/- were taken as refund from the seller. He argues that before the last date of registration of the sale deed, the house has been attached.

[13] The arguments are concluded with the submission that vigilance enquiry and the FIR was with regard to amassing of disproportionate assets to known sources of income of A1. The contention is that naming petitioner in this FIR is only a blatant attempt to arrest him.

Arguments on behalf of the State

[14] Mr. P. Chidambaram, learned senior counsel appearing on behalf of the State of Punjab opposes the prayer for grant of pre-arrest bail. The contention is that there are suspicious transactions made by the petitioner. Made up documents like agreement to sell have been produced. The agreement to sell itself is doubtful as a person purchasing a property worth Rs.10,25,00,000/- is making an agreement to sell on a plain paper. It is argued that to ensure that no trail is left of the transactions, no TDS (tax deducted at source) was deducted by the petitioner while paying monthly rent. The suspicion is that the petitioner was using his black money to plough it back as white money. It is during inquiry of disproportionate assets of A1 that transactions between the petitioner and A2 came to notice.

[15] Learned senior counsel to contradict the pleading of receiving Rs. 1.56 crores from builder relies upon para No. 7 of the agreement to sell dated 12.12.2017 entered by the petitioner and his brother with Malini Buildwell Construction Pvt. Ltd. to show that an amount of Rs.1,18,85,000/- was received. To fortify that there are suspicious transactions, the argument is that agreement to sell dated 8.4.2019 annexed with the petition has not culminated into final transaction till date.

[16] In the impugned order rejecting the prayer for anticipatory bail, table of payments made by the petitioner to A2 are depicted in tabular form.

The same is reproduced:

Sr. No.	Date	Account Number Debited	Account Number Credited	Amount
1.	23.08.2018	50100087158580	50100102977047	30,00,000/-
2.	07.09.2018	50100087158580	50100102977047	3,00,000/-
3.	07.09.2018	ICICI	50100102977047	2,00,000/-
4.	03.10.2018	50100087158580	50100102977047	5,00,000/-
5.	10.10.2018	50100087158580	50100102977047	5,00,000/-
6.	29.10.2018	50100087158580	50100102977047	5,00,000/-
7.	13.11.2018	50100087158580	50100102977047	10,00,000/-
8.	02.02.2019	50100087158580	50100102977047	10,00,000/-
9.	03.02.2019	50100087158580	50100102977047	10,00,000/-
10.	02.09.2019	50100087158580	50100102977047	40,00,000/-
11.	24.09.2019	50100087158580	50100102977047	30,00,000/-
12.	27.09.2019	50100087158580	50100102977047	50,00,000/-
13.	11.10.2019	50100087158580	50100102977047	50,00,000/-
14.	11.11.2019	50100087158580	50100102977047	20,00,000/-
15.	16.11.2019	50100087158580	50100102977047	50,00,000/-
16.	06.12.2019	50100087158580	50100102977047	50,00,000/-
17.	01.01.2020	50100087158580	50100102977047	30,00,000/-
18.	28.01.2020	50100087158580	50100102977047	25,00,000/-
19.	17.02.2020	50100087158580	50100102977047	75,00,000/-

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20.	18.03.2020	50100087158580	50100102977047	70,00,000/-
21.	08.06.2020	50100087158580	50100102977047	10,00,000/-
22.	10.07.2020	50100087158580	50100102977047	30,00,000/-
23.	03.08.2020	50100087158580	50100102977047	30,00,000/-
				6,40,00,000/-

[17] Learned senior counsel further submits that according to the petitioner, A1 and A2 were not known to him before taking the house on rent. Payments of Rs.45,00,000/- (Sr. Nos. 1 to 5 in the table) were made prior to the rent agreement. There is no explanation of the payment of Rs.15,00,000/- made as mentioned at Sr. Nos. 6 and 7 in the table.

[18] It is argued that custodial interrogation of the petitioner is necessary to bring out the transactions other than those mentioned in the FIR. The submission is that A1 and A2 are absconding.

[19] Learned senior counsel refutes the allegations of vindictive attitude of the State against the petitioner. The submission is that the proceedings started with an enquiry against A1. In inquiry, the transactions between the petitioner and A2 surfaced and the petitioner was nominated.

Rebuttal arguments

[20] Mr. Rohatgi, learned senior counsel for the petitioner rebutting the contentions raised by learned senior counsel for the State submits that as the petitioner was hard pressed for having a roof for his family in Chandigarh, he agreed to make advance of security amount to the landlord, which itself is not enough to suspect the landlord-tenant relationship. Moreover, the transaction was through cheque. He relies upon Clauses 6 to 9 of agreement to sell dated 12.12.2017 with the builder to substantiate that apart from Rs.1,18,85,000/-, the petitioner received Rs.40,00,000/- to be

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paid for conversion charges and a sum of Rs. 12,65,000/- to be received in June, 2018. Emphasis is laid on the fact that there is not even a single cash transaction, the sources of finance are available. The enquiry was with regard to disproportionate assets of A1, the petitioner only had a transaction with regard to rent and agreement to sell with A2. He has no role vis-a-vis the properties and bank balance of A1 and his family.

Legal position

[21] Supreme Court in **Jai Prakash Singh v. State of Bihar and another etc., 2012 (4) SCC 379** reiterated the parameters laid down in its earlier judgment in **Siddharam Satlingappa Mhetre v. State of Maharashtra, 2011(1) RCR (Criminal 126** for considering application for anticipatory bail. The relevant para of **Jai Prakash Singh's case (supra)** is quoted below:

17. This Court in Siddharam Satlingappa Mhetre (supra) after considering the earlier judgments of this Court laid down certain factors and parameters to be considered while considering application for anticipatory bail :

"122. The following factors and parameters can be taken into consideration while dealing with the 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 the 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.

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 Indian Penal Code, 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 and 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.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

124. The court must carefully examine the entire available record and particularly the allegations which have been

directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

[22] A Constitution Bench of the Supreme Court in **Sushila Aggarwal and others v. State (NCT of Delhi) and another, 2020(5) SCC 1** laid down the guiding principles for dealing with the application under Section 438 Cr.P.C. The relevant portion is quoted below:

"84. Having regard to the above discussion, it is clarified that the court should keep the following points as guiding principles, in dealing with applications under Section 438, Cr. P.C:

(a) As held in Sibbia, when a person apprehends arrest and approaches a court for anticipatory bail, his apprehension (of arrest), has to be based on concrete facts (and not vague or general allegations) relatable a specific offence or particular of offences. Applications for anticipatory bail should contain clear and essential facts relating to the offence, and why the applicant reasonably apprehends his or her arrest, as well as his version of the facts. These are important for the court which considering the application, to extent and reasonableness of the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not a necessary condition that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

(b) The court, before which an application under Section 438, is filed, depending on the seriousness of the threat (of arrest) as a measure of caution,

may issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

(c) Section 438 Cr. PC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While weighing and considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified - and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438 (2)]. The necessity to impose other restrictive conditions, would have to be weighed on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

(d) Courts ought to be generally guided by the considerations such nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while assessing whether to grant anticipatory bail, or refusing it. Whether to

grant or not is a matter of discretion; equally whether, and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

(e) Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial. Also orders of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

(f) Orders of anticipatory bail do not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

(g) The observations in Sibbia regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that "if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard

*to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in **State of U.P. v. Deoman Upadhyaya.** "*

(h) It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, for a direction under Section 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. The court - in this context is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

*(i) The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the state or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. (See **Prakash Kadam & Etc. Etc v. Ramprasad Vishwanath Gupta & Anr, (2011) 6 SCC 189; Jai Prakash Singh (supra) State through C.B.I. v. Amarmani Tripathi, (2005) 8 SCC 21**). This does not amount to "cancellation" in terms of Section 439 (2), Cr. PC.*

(j) The judgment in Mhetre (and other similar decisions) restrictive conditions cannot be imposed at all, at the time of granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin and subsequent decisions (including K.L. Verma, Nirmal Jeet Kaur) which state that such restrictive conditions, or terms limiting the grant of

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anticipatory bail, to a period of time are hereby overruled.”

Conclusion

[23] It is a trite law that while dealing with the application for grant of bail or anticipatory bail, elaborate discussion of the merits should be desisted. There should not be an impression to the parties concerned of the case having been pre-judged. Only *prima facie* case is to be considered.

[24] Heard learned senior counsel(s) for the parties at length and perused the pleadings. It would not be appropriate at this stage to deal with the contentions raised by learned senior counsel for the petitioner of political vendetta and that the petitioner was granted protection in all other FIRs. The prayer for anticipatory bail is to be considered on the facts of each case. It is not a disputed fact that vigilance enquiry was initiated against A1 for having disproportionate assets to his known sources of income. During enquiry, the rent agreement and agreement to sell of House No. 3048, Sector 20-D, Chandigarh surfaced. The nomination of the petitioner in the FIR is on the basis of two agreements and transactions between the petitioner and A2. The transactions making foundation for naming the petitioner in the FIR are through banking channel. There is an attempt by the petitioner to explain the sources of payments made to A2. There is an explanation put forth for receiving back amount of Rs.75,00,000/- by the petitioner from the seller. At this stage, this court exercises restraint for going any further into the said factual aspect.

[25] Learned senior counsel for the State raised a doubt with regard to genuineness of the agreement to sell and that there was a violation of the provisions of Income Tax Act, 1961 by not deducting TDS while making

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payment of monthly rent. These issues including the factual aspect of exact amount received from the builder for the property at Delhi would be subject-matter during the trial. The veracity of the explanation of the petitioner for making advance payment of security before the date of agreement to sell would be tested in trial.

[26] Taking conceptuous of the facts and circumstances, antecedents of the petitioner and that he is having Z-plus protection meaning thereby remains in a security cover, there is no chance of his absconding. Though there is an apprehension raised that the petitioner was ploughing back the black money but the allegations are based upon documentary evidence and the banking transactions. For joining loose ends, if any with regard to the documentary evidence or banking transactions, this court is of the opinion that custodial interrogation of the petitioner is not required. The petitioner is granted interim bail subject to his joining investigation within one week from today. In the event of arrest, he shall be released on bail subject to his furnishing adequate bail bonds to the satisfaction of the Investigating Officer. He is directed to join the investigation as and when called for. He shall abide by the conditions as envisaged under Section 438(2) Cr.P.C. To ensure that the petitioner is not able to leave the country, he will surrender his passport if not already surrendered.

[27] Put up on 7.10.2021.

[28] Before the next date, the State shall file status report.

**[AVNEESH JHINGAN]
JUDGE**

August 12, 2021/mk