

Dharam and Others Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 30, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 438, 438(2)
Penal Code, 1860 (IPC) â€” Section 120B, 419, 420, 467, 468

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: R.S. Rai and Mr. Karan Pathak and Mr. Rajesh Lamba, for the Appellant; Sagar Deswal, Assistant Advocate General, Haryana, Mr. Sanjeev Sharma and Mr. Rahul Bhargav, for the Respondent

Judgement

Mehinder Singh Sullar, J.

As, identical points for consideration to grant anticipatory bail to petitioners-Dharam, Mahabir, Jagbir, sons of

Harbhajan (1st case), Bir Chand son of Bhoop Singh (2nd case) and Ajit Singh son of Siri Chand (3rd case) are involved, therefore, I propose to

decide the above indicated petitions, arising out of the same case/FIR, by means of this common order, to avoid the repetition of facts. The

petitioners have directed the instant separate petitions for the grant of anticipatory bail in a case registered against them along with their other co-

accused, vide FIR No. 38 dated 17.02.2013, on accusation of having committed the offences punishable under Sections 419, 420, 467, 468, 470

and 120-B IPC, by the police of Police Station Badshahpur, District Gurgaon, invoking the provisions of Section 438 Cr.P.C.

2. Notices of the petitions were issued to the State.

3. After hearing the learned counsel for the parties, going through the record with their valuable assistance and after considering the entire matter

deeply, to my mind, the present petitions for anticipatory bail deserve to be accepted in this context.

4. The prosecution claimed that one Jawahar Ram son of Rahla Ram, was recorded as owner and in possession of the land, in question, in the

revenue record. He was stated to have executed a registered General Power of Attorney in favour of petitioner-Ajit Singh. Thereafter, accused

Ajit Singh sold the land to petitioners-Dharam and others, by way of registered sale-deed dated 07.02.1989.

5. The complainant claimed that their ancestor Jawahar Ram son of Pehlada Ram was the owner of the land in dispute. They claiming themselves

to be his LRs, have now lodged the present case after 24 years that the impugned sale-deed dated 07.02.1989 was forged and fabricated.

Whether Jawahar Ram son of Rahla Ram or Jawahar Ram son of Pehlada Ram, was the actual owner and in possession, or the complainant are

the LRs of Jawahar Ram son of Pehlada Ram, were entitled to inherit the land, inter alia, would be the moot points to be decided during the course

of trial by the trial Court. The dispute appears to be purely of a civil nature and can only be adjudicated upon by the civil court in a civil suit

(Annexure P-7) already filed by the complainant-party against the accused-party.

6. Be that as it may, the facts remains is that the complainant claiming themselves to be the LRs of Jawahar Ram son of Pehlada Ram, have

challenged the impugned sale-deed dated 07.02.1989 after a period of 24 years after its execution. Therefore, to my mind, custodial interrogation

of the petitioners is not at all required after 24 years of the alleged occurrence.

7. There is yet another aspect of the matter, which can be viewed entirely from a different angle. During the course of preliminary hearing, a

Coordinate Bench of this Court (Vijender Singh Malik, J.) passed the following order on 12.04.2013 in the 1st petition:-

Learned senior counsel for the petitioners contends that the complainants have lodged a report with the police in the year 2013 saying that some

39 years back, their grandfather Jawahar Lal Banga son of Pilada Shah was owner of certain piece of land. According to him, the revenue record

has been in the wrong name of Jawahar Lal son of Rala Ram, from whom the petitioners had purchased the land in the year 1989.

Notice of motion, returnable for 30.5.2013.

In the meanwhile, the petitioners are directed to join the investigation and if they are sought to be arrested, they shall be released on bail to the

satisfaction of the arresting/investigating officer, subject to the conditions laid down in section 438 sub section 2 clauses (i)(ii) and (iii) of the Code

of Criminal Procedure.

Sequely, similar orders were passed in CRM Nos. M-17331 and 14655 of 2013 on May 27, 2013 and July 16, 2013, respectively.

8. At the very outset, on the instructions from ASI Mohan Singh, learned State Counsel has acknowledged the factual matrix and submitted that

the petitioners have already joined the investigation. They are no longer required for further interrogation, at this stage. Moreover, all the offences

alleged against the accused are triable by the Court of Magistrate. Since, even the prosecution has not yet submitted the final police report

(challan), so, the conclusion of trial will naturally take a long time. In the light of aforesaid reasons, taking into consideration the totality of facts and

circumstances, emanating from the record, as discussed here-in-above and without commenting further anything on merits, lest it may prejudice the

case of either side during the course of trial of the main case, the instant petitions for anticipatory bail are accepted. The interim bail already granted

to the petitioners by this Court, vide orders dated 12.04.2013, May 27, 2013 and July 16, 2013, is hereby made absolute, subject to the

compliance of the conditions, as contemplated u/s 438(2) Cr.P.C.

Needless to mention that, in case, the petitioners do not cooperate or join the investigation, the prosecution would be at liberty to move a petition

for cancellation of their bail, in this relevant context.