

Gian Chand Sharma Vs. State

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Court : Delhi

Decided On : Nov-25-2002

Reported in : 2003(66)DRJ566

Judge : Mahmood Ali Khan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438; East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 - Sections 14(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 120B; Prevention of Corruption Act - Sections 13(1)

Appeal No. : Crl. M.M. No. 2002/02

Appellant : Gian Chand Sharma

Respondent : State

Advocate for Def. : Pawan Sharma, APP

Advocate for Pet/Ap. : N.N. Aggarwal,; Ajit Warrir and; Abhishek Dutta, Advs

Disposition : Application dismissed

Judgement :

Mahmood Ali Khan, J.

1. The petitioner has submitted this application for grant of anticipatory bail under Section 438 of the Cr.P.C. A case under Section 13(1)(d) of Prevention of Corruption Act and Section 120B IPC has been registered against him. The petitioner has working as a consolidation officer of village Kanjhawata & Pooth Khurd, Delhi in June, 1996. Notification under Section 14(1) of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 was issued in 1988 and 1993 in respect of these villages and the consolidation committees were constituted in 1996. The consolidation scheme in respect of both the villages was prepared in 1996 and 1998. It is alleged that the petitioner is complicity with other revenue staff sanctioned farm houses in proposed Latdora and outside in violation of the Government instructions; on acceptance of illegal gratification recorded mutation entries on the basis of sale deeds executed and registered in Mumbai; in contravention of the standing Government orders, the petitioner increased the residential as well as industrial plots in excess of the eligible land owners; a 100 feet wide road was provided in the scheme of village Kanjhawla in order to benefit some plot holders and thus had monetary gains to himself in violation of Section 13(1)(d) of the Prevention of Corruption Act etc. etc.

2. The argument of the counsel for the petitioner is that the petitioner has been falsely implicated in this case. The petitioner is a consolidation officer and has nothing to do with the sanctioning of the farm houses as they fall within the jurisdiction of the MCD. Not a single instance has been cited to show that the petitioner had allotted plots at good locations and had obtained monetary benefit for himself. Under the East Punjab Holding (Consolidation and Prevention Fragmentation) Act the mutation and transfer entries may to sanctioned by the consolidation officer and it is wrong that after the issue of the notification and the consolidation proceedings no sale or transfer of the land is permissible in the area covered. by the consolidation scheme. The petitioner sanctioned transfer and mutation only in respect of those cases where the purchasers of the land had produced registered sale deeds. It was argued that a question was raised in the legislative assembly of Delhi regarding mutation done on the basis of the registered sale deeds at Mumbai and it was clarified on behalf of the Government that the sale deeds which were registered at Mumbai prior to 24.9.2001 could be treated as a valid registration and the mutation on their basis would be valid

mutation. After the said clarification no mutation or transfer entry has been done. It is contended that the FIR also does not mention as to how many eligible land owners were entitled to the allotment of the industrial or the residential plots and how many of them were sanctioned such plots. Accusation is made in ignorance of the provision of the East Punjab Holding (Consolidation and Prevention Fragmentation) Act which has provided elaborate mechanism for preparation of the scheme for consolidation of the holding and redressal of the grievances. The provision of a 100 feet wide road was made on the demand of the village advisory committee, various land holders and the directions of the then Chief Minister. Further argument is that the police has already taken house search of the petitioner and has not recovered any incriminating material there from. The petitioner and some other revenue officials are being falsely involved in this case. Lalit Kumar Patwari and Ishwar consolidation officer have already been granted bail by the special Judge. Lastly it was submitted that the petitioner had been joining the investigation and has joined it on 20 dates and his custodial interrogation is not required. Counsel for the petitioner has cited *Miss Harsh Sawhney v. Union Territory (Chandigarh Administration)* AIR 1978 SC 7076 where it was held that the necessity of making a search of the premises of the accused in her presence and the necessity of her presence for interrogation in connection with investigation were no grounds for taking the accused into custody.

3. I have given careful consideration to the submissions made at the bar and the case law cited. The allegations against the petitioner are very grave and serious in nature. He was working as a consolidation officer when the consolidation scheme of village Kanjhawala and Pooth Khurd were notified and the consolidation committee was constituted. The effect of the notification was that the land of these villages vested in the consolidation officer. The accusation against the petitioner is that he misused his official position and allowed mutation and transfer entries on the basis of the sale deeds which were registered in Mumbai in violation of the standing departmental instructions and thereby making illegal monetary gains for himself etc. The case is still under investigation. The Supreme Court in *State v. Anil Sharma* : 1997 CriLJ4414 on the facts which are similar has made the following observation:-

'While the investigation was in progress the respondent approached the High Court for an anticipatory bail under Section 438, Cr.P.C. The High Court granted the bail reminding itself of the principle that 'it is well settled that bail and not jail is a normal rule'. The bail was subject to the conditions that he shall not go abroad without prior permission of the court and shall surrender his passport to the CBI. Challenging the High Court's order granting the bail CBI contended that respondent's was a clear case of corruption in high places and that considering the responsible and high office which the respondent held and the wide influence which he could wield and the great handicap which the investigating agency would be subjected to while interrogating a person armed with an order of anticipatory bail, the discretion under Section 438 should never have been exercised in favor of the respondent.

4. As held by the Supreme Court in the above cited case the joining of the petitioner in the investigation armed with the protection against arrest was a mere ritual. The custodial interrogation of the petitioner is necessary to unearth the monetary gains which the petitioner had obtained by making all these mutation and transfer entries. The judgment of the Supreme Court in Miss Harsh Sawhney (supra) is distinguishable. The bail order was pressed in that case on the ground that the appellants presence was necessary for making a search and recovery of certain documents and second that her presence was required by the police for interrogation in connection with the investigation on the facts and circumstances of the case. The Supreme Court held that for none of these reasons the bail could be refused. It is not the case here. The search of the premises of the petitioner had already been taken.

5. For proper investigation asking the petitioner to join the investigation duly insulated and protected by a pre arrest bail order would be ineffective as held by the Supreme Court in the case State v. Anil Sharma (supra). The bail was granted to be co-accused on the peculiar role assigned to them which is totally different from the case of present petitioner. Co-accused Dharmender has already been refused anticipatory bail by order dated 25.9.2002,

6. In the totality of the facts and circumstances of the case it will not be prudent to grant anticipatory bail to the petitioner. The application has no merit. It is dismissed.

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