

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

Crl. Misc. No.M-36123 of 2015 (O&M)

Date of Decision: 29.10.2015

Vijay Kumar

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Ravi Sodhi, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Crl. Misc. No.35606 of 2015

This is an application for placing on record the zimni orders (Annexure P-3) (Colly) and for exemption from filing the true typed copies of the zimini orders.

Criminal Misc. Application is allowed as prayed for.

Crl. Misc. No.M-36123 of 2015

This petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in case FIR No.120 dated 20.04.2015 registered under Sections 420, 467, 468, 471, 504, 506 and 120-B IPC at Police Station City Dabwali, District Sirsa.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas, no offence is made out

against him. There is no specific allegation against the petitioner that he had received any amount or had given any document. He has falsely been implicated in the case on the basis of vague and baseless allegations. The alleged occurrence took place in the month of July, 2013 but the FIR has been registered on 20.04.2015 and the delay in registering the same has not been explained. Initially, the enquiry was conducted by the police and the allegations against the petitioner were found to be false. Subsequently, the complaint was filed under Section 156(3) Cr.P.C which was sent to the police for lodging of the FIR and for investigation. The petitioner has been implicated in the case on the ground that his mother is a Member of Block Samiti and Sarpanch of the Village. Learned counsel further submits that the complainant was having grudge against the family of the petitioner. There was some dispute because of transaction of loan and for that reason, a false story has been concocted. Nothing is to be recovered from the petitioner and the case is based on documentary evidence, which are already in possession of the complainant or with the police authority and as such, the custodial interrogation of the petitioner is not required.

Learned counsel for the petitioner has relied upon the judgments of Hon'ble the Apex Court in case ***Arnesh Kumar vs State of Bihar and another 2014(3) RCR (Criminal) 527, Siddharam Satlingappa Mhetre vs State of Maharashtra and others 2011(1) SCC 694, Gurbaksh Singh Sibbia etc. vs The State of Punjab 1980(2) SCC 565***, judgment of Jharkhand High Court in case ***Ravi Kumar Oraon vs State of Jharkhand 2013(3) AIR Jhar R. 522***, judgment of Manipur High Court in case ***Khunungmayum Dhana Singh vs State of Manipur and another 2014(8) RCR (Criminal) 253***, judgments of this Court in cases ***Bajinder Singh and another vs State of Punjab, CRM-M No.13285 of 2015***, decided on **23.07.2015** as well as ***Gurwinder Singh vs State of***

Punjab 2014(5) Law Herald 4464.

Heard the arguments of learned counsel for the petitioner and have also perused the allegations in the FIR as well as other documents available on the file.

As per allegations levelled in the FIR, the present petitioner along with co-accused, namely, Ramesh Kumar Paster and Kapil in furtherance of their common intention duped an amount of ₹ 24 lacs of the complainant Gurwinder Singh on the pretext of arranging job in Indian Railway. Not only the amount was accepted by the petitioner but a fake appointment letter was also issued for the post of Ticket Collector in Railways department in favour of son of the complainant. Even the son of the complainant was also sent for training at Railway Station Danapur, where he remained for ten days. Not only the appointment letters were fake and fabricated but the documents for attending training were also fictitious and thereafter, the matter was reported to the police. The boy, who was sent on training, is handicapped and was sent on fictitious training. It appears that not only the petitioner but other accused are also involved in commission of offence, hence, the custodial interrogation is required.

In ***Jai Prakash Singh v. State of Bihar, 2012(2) R.C.R. (Criminal) 251 : 2012 (1) Recent Apex Judgments (R.A.J.) 462 : (2012) 5 SCC 690***, Hon'ble the Apex Court, on a perusal of Section 438 of the Code, took note of the pre-conditions for granting anticipatory bail and laid emphasis on the nature and gravity of the accusation.

“18. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the

court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See: **D.K. Ganesh Babu v. P.T. Manokaran and Ors., 2007(2) R.C.R.(Criminal) 161 : (2007) 4 SCC 434; State of Maharashtra and Anr. v. Mohd. Sajid Husain Mohd. S. Husain and Ors., 2007(4) R.C.R. (Criminal) 581: (2008) 1 SCC 213; and Union of India v. Padam Narain Aggarwal and Ors., 2008(4) R.C.R. (Criminal) 665 : 2008(6) Recent Apex Judgments (R.A.J.) 10 : (2008) 13 SCC 305).**”

In the case of **Ranjit Singh v. State of Madhya Pradesh, 2013(4) R.C.R. (Criminal) 600 : 2013(5) Recent Apex Judgments (R.A.J.) 492 : 2013 (12) SCALE 190**, the appellant therein was charged with the offences, inter alia, under Section 34 and Section 302 of the IPC. While discussing the power to grant bail by the Court, Hon'ble the Apex Court stated that it is well settled in law that grant of bail though involves exercise of discretionary power of the court, yet the said exercise has to be made in a judicious manner and not as a matter of course.

The Hon'ble Apex Court in **Siddharam Satlingappa Mhetre's** case (supra) after considering the earlier judgments of Hon'ble the Apex 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. 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.”

Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is *prima facie* of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty.

Keeping in view the allegations and specific role of the petitioner, no ground is made out to release the petitioner on anticipatory bail.

The remedy of anticipatory bail is exceptional and the same cannot be claimed as a matter of right by stating that nothing is to be recovered from the petitioner as all documents are either in the custody of the police or with the department. For exercising the powers under Section 438 Cr.P.C., the accused-petitioner is to make out a case by considering the allegations and nature of offence.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

29.10.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE