

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-5229 of 2016

Date of Decision: November 3, 2016

Satish Khola

.....Petitioner

Vs.

State of Haryana and anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.N.S. Shekhawat, Advocate for the petitioner.
Mr. C.S. Bakshi, Addl.A.G., Haryana.
Mr.A.P.S. Deol, Sr. Advocate with
Mr. Vishal Lamba, Advocate for respondent No.2.

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M.M.S. BEDI, J.

This is a petition under Section 439 (2) Cr.P.C. for cancellation of anticipatory bail granted to respondent No.2 vide order dated January 18, 2016 in a case under Sections 420, 467, 471, 409, 120-B, 166-A IPC and Sections 7 and 13 of the Prevention of Corruption Act.

As per the allegations in the FIR registered at the instance of petitioner, respondent No.2 had indulged in serious acts of corruption but on an anticipatory bail application moved by respondent No.2 before the Addl. Sessions Judge, Rewari, an order dated January 18, 2016 was passed to the effect that it was a fit case where the application seeking pre-arrest bail

should be disposed of with a direction to the investigating agency to give a 7 days clear notice to respondent No.2 in case any custodial interrogation is felt necessary, after going through the reports to be filed by the Special Audit Team and State Vigilance Bureau team which was constituted by the Chief Minister.

Mr. N.S. Shekhawat, learned counsel for the petitioner-complainant submitted that the anticipatory bail had not been granted but a direction was given to the investigating agency to give 7 days clear notice to respondent No.2 in case any custodial interrogation of respondent No.2 was required. Counsel for the petitioner has submitted that a detailed report had been submitted by the investigating agency regarding the financial irregularities committed by respondent No.2 Shakuntla Bhandori, President of Municipal Council, Rewari. Counsel relief upon report annexure P-2 prepared by SDO (C), Rewari to determine the culpability of respondent No.2 and other employees of Municipal Council recommending that the matter should be looked into by the Vigilance Department.

With the assistance of counsel for the petitioner and State counsel, I have carefully gone through the complaint against respondent No.2 and the nature of the allegations and in the light of said allegations an order has been passed by the Additional Sessions Judge, while deciding her application under Section 438 Cr.P.C. Respondent No.2 in the capacity as President of the Municipal Council, Rewari had passed certain orders which facilitated the manipulations of official record and had committed cheating,

forgery and misappropriation of huge amount. The complainant- petitioner is the District President of the ruling party whereas respondent No.2 is allegedly affiliated with the Congress party. On account of the enmity, the allegations were levelled against respondent No.2 which are being looked into by the investigating agency.

Mr.Shekhawat has vehemently urged that the Sessions Court did not have any jurisdiction to pass an order that a notice should be given to respondent No.2.

I have heard learned counsel for the petitioner and carefully gone through the order passed by Sessions Court by virtue of which a condition was imposed to issue a notice of 7 days before arresting respondent No.2.

The foremost question which is required to be determined in the present case is whether a Court exercising powers under Section 438 Cr.P.C. can issue a direction regarding a notice to be issued to the accused before the arrest of the accused and that whether any such order passed should be cancelled in the exercise of powers under Section 439 (2) Cr.P.C. It is settled principle of law that merely because a particular offence is cognizable is not sufficient enough to warrant the arrest of an accused. In this context law has been laid down by the Apex Court in **Joginder Kumar Vs. State of UP**, (1994) 4 SCC 260. A discretion has been given to the investigating agency even in cognizable cases to opt to defer the arrest or to opt for not arresting the accused depending upon the circumstances of each

case. The Court exercising powers under Section 438 Cr.P.C. can grant the concession of pre-arrest bail when there is reasonable apprehension of arrest to an accused, taking into consideration the status of the investigation and the material which is available on the record against the accused.

In the present case, the FIR has been registered at the instance of petitioner alleging financial impropriety against respondent No.2 while executing different works mentioned in the FIR in different wards. During the course of investigation it was found that the work of the Municipal Council had been entrusted in 451 works and in the year 2013-14, 1100 cases have been disposed of wherein there was embezzlement of huge amounts. None of the allegations mentioned in the FIR indicate that custodial interrogation of respondent No.2 was required.

After going through the report submitted by the police, the learned Additional Sessions Judge, Rewari has arrived at a conclusion that respondent No.2 would be entitled to advance notice before her arrest is effected. Deferring of arrest during the course of investigation is mentioned in the provisions of Section 41 of the Criminal Procedure Code. The Apex Court in **Som Mittal Vs. Government of Karnataka**, (2008) 3 SCC 753 had observed that Section 2 (c) Cr.P.C. defines a cognizable offence as an offence in which a police officer may arrest without warrant. Similarly Section 41 Cr.P.C. states that police officer 'may' arrest a person involved in the cognizable offence. The use of word '**may**' shows that police officer was not bound to arrest even in a cognizable offence. Again in Section 157

(1) Cr.P.C. it is mentioned that a police officer shall investigate a case relating to a cognizable offence, and ‘if necessary’ take measures for the arrest of the offender. This again makes it clear that arrest is not a must in every case of a cognizable offence. A police officer should arrest or not, is clarified in **Joginder Kumar’s** case (supra). In **Siddharam Satlingappa Vs. State of Maharashtra and others**, (2011) 1 SCC 694, it was observed that the existence of power to arrest is one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. In view of uncertainty in the present case regarding the requirement of respondent No.2 to be arrested in cognizable offence, the learned Sessions Court has not acted illegally or without jurisdiction in granting a limited protection to respondent No.2 to the effect that in case she is required to be arrested a notice will be given to respondent No.2. The order passed by the Sessions Court is not illegal or improper as such I do not find any ground to pass the order of cancellation of bail granted to respondent No.2.

Dismissed.

November 3, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.