

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

**Criminal Misc. No. M-20529 of 2018
Date of decision: 17.10.2018**

Narender Kumar

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Nonish Kumar, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana
for the respondent-State.

Daya Chaudhary, J.

This petition has been filed under Section 438 read with Section 482 Cr.P.C. for grant of anticipatory bail to petitioner-Narender Kumar in case FIR No.855 dated 15.08.2017 registered under Sections 406, 420, 506 IPC and Sections 467, 468 and 471 IPC added later on at Police Station Sadar Karnal, District Karnal.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case by the complainant whereas he was not involved in commission of offence. There was dispute of money transaction between the petitioner and complainant and by keeping that grudge in mind, the petitioner has been implicated in the case. Learned counsel further submits that a compromise was arrived at between the parties as an affidavit was given by the complainant stating that he had no

grouse against the petitioner as money had been received by him. Learned counsel also submits that a petition for quashing of FIR on the basis of compromise has been filed. The petitioner is ready to join investigation and nothing is to be recovered from him.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that specific allegations are there against the petitioner. The amount has been returned by the petitioner to the complainant, which shows that the petitioner has admitted that money was accepted by him. Learned State counsel also submits that serious allegations are there against the petitioner as a forged and fictitious appointment letter was given to the complainant after accepting huge money from the complainant on the pretext that the complainant was to be appointed against some post. The petitioner has not cooperated in the investigation as in spite of giving many opportunities as neither the amount nor the rubber stamp used by the petitioner was recovered. Even the petitioner did not respond to the queries put to him by the Investigating Officer as to how the stamp of Haryana Staff Selection Commission, Panchkula was procured and used by forging the signatures of the concerned authority to show that the appointment letter was infact issued by the Commission. The documents have been sent to the Forensic Laboratory for comparison of the signatures and the custodial interrogation of the petitioner is required for recovery of the amount and to know as to from where the stamp was procured/purchased/prepared.

Heard arguments of learned counsel for the petitioner as well as

learned State counsel and have also perused the contents of the FIR and other documents available on the file.

As per allegations levelled in the FIR, the petitioner while working in Haryana Police, allured the complainant to pay amount for appointment by Haryana Staff Selection Commission. After accepting huge amount, a forged appointment letter was given to the complainant. Subsequently, the complainant came to know that the appointment letter was false and fabricated and when the amount was demanded by the complainant, a threat was given to him by the petitioner. In spite of giving opportunities for joining investigation, the petitioner did not supply the requisite documents and has not cooperated in the investigation. The custodial interrogation of the petitioner is required to know as to what modus operandi has been adopted by him in committing fraud by forging signature and fabrication of documents.

It is a well settled law that anticipatory bail cannot be claimed as a matter of right but it is a concession and the same is to be granted by considering various factors. For grant of anticipatory bail, the nature, gravity of offence as well as role of the accused is to be seen. There are certain factors, which are to be considered while granting bail under Section 438 Cr.P.C. Hon'ble the Apex Court in a judgment rendered in ***Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another 2015 (8) JT 125*** has summarized certain factors to be taken into consideration while granting anticipatory bail, which are reproduced as under:

“The principles which can be culled out, for the purposes of the instant case, can be stated as under:

(i) The complaint filed against the accused needs to be thoroughly examined, including the aspect whether the complainant has filed a false or frivolous complaint on earlier occasion. The court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

(ii) The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases, the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

(iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the

accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a preconviction stage or post-conviction stage.

(iv) There is no justification for reading into Section 438 Cr.P.C. the limitations mentioned in Section 437 Cr.P.C. The plenitude of Section 438 must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 Cr.P.C. to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(v) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till

the trial of the case.

(vi) It is a settled legal position that the court which grants the bail also has the power to cancel it. The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the Public Prosecutor or the complainant, on finding new material or circumstances at any point of time.

(vii) In pursuance of the order of the Court of Session or the High Court, once the accused is released on anticipatory bail by the trial court, then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail.

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 Cr.P.C. should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration

while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) 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;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension

of tampering of the witness or apprehension of threat to the complainant;

(j) 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.

No doubt no flexible guidelines or straightjacket formula can be provided for grant or refusal of anticipatory bail and no attempt should be made to provide rigid and inflexible guidelines in this respect. However, grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case.

By considering the nature of allegations and role of the petitioner and also the fact that the petitioner has not cooperated in the investigation as neither the documents nor the relevant information has been supplied in spite of giving various opportunities, I find that anticipatory bail is a relief, which is not to be granted in a routine manner but under the exceptional circumstances. A person approaching the Court for such relief must come with clean hands discussing all the facts without any concealment. In the present case, the petitioner was asked time and again to join investigation and interim order was also passed in his favour but still he did not cooperate in the investigation.

Accordingly, by considering the allegations levelled and the conduct of the petitioner, there is no reason to extend the interim order passed in favour of the petitioner and the present petition being devoid of

any merit is, hereby, dismissed.

However, in case, the petitioner surrenders before the trial Court within a period of two weeks from the date of receipt of certified copy of this order and moves an application for regular bail, the trial Court is directed to consider the same and pass necessary orders in accordance with law within a period of one week thereafter.

17.10.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No