

Crl. Misc. No. M-20741 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-20741 of 2018

DATE OF DECISION:16.05.2018

Sajni Bala and another

.....Petitioners

Versus

CBI ACB Sector 30-A, Chandigarh

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. SP Soi, Advocate
for the petitioners.

Mr. Sumeet Goel, Advocate
for respondent-CBI.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to accused-petitioners, namely, Sajni Bala and Kewal Kishan in case FIR No. RCCHG2018A0004 dated 1.2.2018 registered under Sections 120-B,409,420,467,468,471,477-A IPC and Section 13 (2) read with Section 13 (1) (c) and (d) of Prevention of Corruption Act at Police Station CBI, ACB, CHG, Chandigarh.

Learned counsel for the petitioners contends that both the petitioners are rustic and less educated persons as petitioner No.1 has passed 4th standard only, whereas, petitioner No.2 is matriculate and is a vegetable seller. Both the petitioners were not aware about the transactions made through their accounts as their passbooks were with the main accused,

namely, Sanjeev Kumar, who was working as Sub Postmaster Dakhni Gate, Nokadar and the same were never given to them. Learned counsel further contends that the petitioners were not having any idea about the alleged fraud as all the vouchers were prepared with the same handwriting, which was not of the petitioners. Neither any misappropriation has been done by the petitioners nor it was in their knowledge. The only allegation levelled against the petitioners is that they allowed main accused-Sanjeev Kumar to committ fraud through their accounts. Learned counsel also contends that the main accused used to obtain signatures of the petitioners on the withdrawal/deposit form and used to fill the forms without having any knowledge of the petitioners. The petitioners are not beneficiary as neither any amount was withdrawn by them nor the same was utilized. The petitioners are ready to join the investigation and nothing is to be recovered from them.

Mr. Sumeet Goel, learned counsel for CBI has opposed the submissions made by learned counsel for the petitioners on the ground that the petitioners were well aware about the transactions as not only the amount was deposited but withdrawn also. There are allegations of cheating, forgery and misappropriation of government amount. The accounts were opened/operated in connivance with main accused-Sanjeev Kumar. It was not a case of meagre amount but lacs of amount was deposited/withdrawn. The custodial interrogation of the petitioners is required and they do not deserve concession of anticipatory bail. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the case of **State represented by CBI Vs. Anil Sharma** 1997 (3) Crimes 252, of this Court in **Sadhvi Deva Thakur Vs. State of Haryana** (Crl. Misc.

No. M-16922 of 2017 decided on 26.2.2018) and **Bal Krishan Fauzdar Vs. State of Haryana** (Crl. Misc. No. M-25130 of 2017 decided on 30.10.2017) in support of his contentions.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other documents available on the file.

Admittedly, the entries of deposit/withdrawal of huge amount are there in the passbooks of the petitioners. Some of the signatures have been admitted by the petitioners themselves but some are stated to be forged/fabricated by main accused-Sanjeev Kumar. A perusal of the FIR shows that there are allegations of conspiracy with main accused-Sanjeev Kumar and accounts were opened in Post Office, Nakodar in the name of the petitioners. Not only the amount was deposited but the same was withdrawn on various occasions, which is clear from the entries made in the accounts of both the petitioners. Investigation is at the initial stage and both the petitioners have not cooperated in the same and custodial interrogation is required to know as to what modus operandi has been adopted by the accused persons in committing fraud and misappropriation of the government fund.

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 pre-conviction stage or post-conviction stage.

(iv) There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. 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 CrPC 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 CrPC 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 submissions made by learned counsel for the parties and on perusal of allegations levelled against the petitioners and

also the contentions raised by learned counsel for CBI, 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 petitioners are admitting about their knowledge and signatures on the vouchers but still they are showing that they are ignorant about deposit and withdrawal of the amount. Their custodial interrogation appears to be necessary for complete and effective investigation. It is well settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect, who is well-ensconced with a favourable order under Section 438 Cr.P.C. In case the custodial interrogation is denied to the investigating agency, it may leave many loops and gaps in the effective investigation being carried out, which is not called for.

In view of the above, I am of the considered view that custodial interrogation of the petitioners is necessary to unearth the scams and fraudulent actions of the petitioners and main accused.

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

May 16, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes