IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. M-37358 of 2018 (O&M)
Date of decision: 25.10.2018

Laxmi Raj Singh and another ..**Petitioners**

Versus

State of Haryana ..**Respondent**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Vikaram Chaudhri, Sr. Advocate with
Ms. Isha Goyal, Adocate
for the petitioners.

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

Mr. R.S. Rai, Sr. Advocate with
Ms. Rubina Virmani, Advocate
for the complainant.

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Daya Chaudhary, J. (Oral)

Leaned counsel for the petitioners submits that in pursuance of order dated 31.08.2018, petitioner No.2 i.e. Manju Solanki has joined investigation and the same has been affirmed by learned State counsel on instructions from ASI Mukesh Kumar.

In view of the submissions made by learned counsel for the petitioners as well as learned State counsel, interim order dated 31.08.2018 passed by this Court in favour of petitioner No.2 is made absolute.

The petition qua petitioner No.1 i.e. Laxmi Raj Singh, is dismissed.

Detail order would follow.

25.10.2018 **(DAYA CHAUDHARY)**
neetu **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

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

(1) CRM-M No.37358 of 2018 (O&M)

Laxmi Raj Singh and another

......Petitioners

Versus

State of Haryana

...Respondent

And

(2) CRM-M No.38111 of 2018

Vikas Solanki

......Petitioner

Versus

State of Haryana

...Respondent

Date of decision : 25.10.2018

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Vikram Chaudhri, Senior Advocate with
Ms. Isha Goyal, Advocate for the petitioners
in both the petitions.

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

Mr. R. S. Rai, Senior Advocate with
Ms. Rubina Virmani, Advocate for the complainant
in CRM-M No.37358 of 2018.

Mr. Kunal Dawar, Advocate for Chandan Singh Chauhan.

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DAYA CHAUDHARY, J.

This order of mine shall dispose of two petitions i.e. CRM-M No.37358 of 2018 and CRM-M No.38111 of 2018 as the same have arisen out of the same FIR and identical question of law and facts are involved for adjudication in both the cases. However, for the sake of convenience, facts have been extracted from CRM-M No.37358 of 2018.

Petitioners Laxmi Raj Singh and Manju Solanki in CRM-M No.37358 of 2018 and petitioner Vikas Solanki in CRM-M No.38111 of 2018 have approached this Court by way of filing present petitions under Section 438 of the Code of Criminal Procedure, 1973 (for short the 'Cr.P.C.') for grant of anticipatory bail to them in case FIR No.137 dated 25.06.2018 registered under Sections 120-B, 406, 420, 467, 468, 471 of the Indian Penal Code, 1860 (for short the 'IPC') registered at Police Station – Sector 37, Gurugram.

After issuing notice of motion and as per the direction, petitioner Manju Solanki joined investigation and interim protection was also granted to her vide order dated 31.08.2018. Joining of investigation has been affirmed by learned State counsel. Subsequently, case was adjourned on various dates either on request of learned counsel for the petitioners or the complainant. Other petitioners joined investigation but not cooperated as they did not respond the queries put to them.

Vide separate short order dated 25.10.2018, passed in CRM-M No.37358 of 2018, interim order dated 31.08.2018 passed in favour of petitioner No.2 Manju Solanki was made absolute, whereas qua other petitioners, the petitions were dismissed.

A detailed order was required to be passed as certain documents were placed on record during pendency of the petitions.

Briefly stated, the allegations in the FIR are that the complainant made a complaint to the police authorities alleging that certain bills and documents were forged and fabricated and a huge loss was caused to the complainant company by using such bills. As per the allegations, M/s Trim India Pvt. Ltd. is the manufacturer of Door Trims, Injections and Blow Moulded parts, which were to be supplied to companies like M/s Maruti Suzuki India Ltd., Mahindra & Mahindra etc. at their desired locations. For that purpose, the accused used to supply the goods of the complainant company to the customers at various places in the country. Accused Manju Solanki and Vikas Solanki were the Directors of the accused company namely Beacon Courier and Cargo India Pvt. Ltd. and accused Laxmi Raj Singh was the caretaker of said company. Other accused was the employee of the complainant company, who in connivance with the accused caused financial loss to the complainant company by adopting same modus operandi. It was found that the accused took extra amount in crores from the complainant company by forging bogus bills. On the basis of that complaint, FIR was registered under Sections 406, 420, 467, 468, 471 read with Section 120-B IPC. During investigation, records were taken from the concerned authorities and bills were also taken into possession. It was also the allegation that the slips of Mathadi were found forged as per report given by Mathadi, Pune. It was also alleged that by forging the documents, the amount was misappropriated.

Learned senior counsel for the petitioners submits that the case of the petitioners is based upon the agreement entered into between the parties regarding transportation of the material, wherein it was clarified that the charges were to be paid by the complainant. The complainant party also filed a suit for recovery of the amount as amount was due to the complainant party and due to this reason, the FIR was registered. Learned counsel further argued that the case is based on the documentary evidence and no custodial interrogation is required. He further submits that the amount of transportation charges was paid/deposited in the account of one Ajay Chauhan who was an employee of the company but subsequently, he was removed from the employment in the month of June, 2016. In case any forgery has been committed or documents have been fabricated, the same has been done by said Ajay Chauhan. Learned counsel also submits that the bills/invoices were raised by the company which were duly acknowledged by the complainant company since 2013 and no objection was raised till 2017. The complaint was made only when the amount which was due to the complainant party was not paid to the petitioner company.

Learned State counsel has opposed the submissions made by learned counsel for the petitioners on the ground that huge amount has been embezzled/misappropriated at the instance of the accused persons. It was also verified from the concerned office that no such receipts were ever issued for depositing the amount of transportation. He further submits that on the basis of forged documents/bills, the accused persons siphoned crores of rupees contrary to the terms and conditions of the agreement. The civil suit for recovery was filed after registration of the FIR. Learned State counsel also submits that the custodial interrogation is required as not only the specific allegations are there but huge amount is to be recovered. In spite of various opportunities, they did not cooperate.

Learned senior counsel for the complainant has vehemently opposed the submissions made by learned counsel for the petitioners on the ground that not only the documents/bills have been forged/fabricated but the complainant party as well as the State government have been cheated by not depositing the amount for issuing the slips by the concerned Board of Maharashtra. He also submits that a report was taken from the Mathadi Board, Pune in writing that the slips were never issued by the Board, rather the same were forged/fabricated. Learned senior counsel also submits that the petitioners-accused are changing their stand regarding their involvement by taking contradictory stand. Not only they have concealed the material facts but have made all efforts not to disclose the correct picture.

Heard arguments of learned counsel for the parties and have also perused the FIR and other documents available on the record.

As per the allegations in the FIR, the accused have misappropriated crores of rupees by forging the receipts issued by Mathadi Board, Pune (Maharashtra). It was verified from the Board that the slips were never issued by the Mathadi Board and during investigation, all the slips were found to be forged.

During pendency of the petition, the petitioners were directed to join investigation. Though they joined investigation but not cooperated with the investigating agency.

Filing of civil suit for recovery of amount and that too after lodging of the FIR is not a ground to grant anticipatory bail. It is not a case of simple recovery of amount but slips/documents have been forged by the accused persons to take undue advantage and to cause loss to the complainant company as well as the State government. It is not only the case where documents have been forged and fabricated by the accused persons by using the bills of Pimpari Chindhwad Mathadi, Pune and on the basis of said forged bill, but the accused persons have usurped crores of rupees which was not part of the agreement entered into between the parties. All the accused have actively participated and with joint modus operandi caused financial loss to the complainant company as well as the State. The accused party used to raise bills of his work done by showing as if the bills were issued by the Mathadi Board, whereas those bills were never issued by the Mathadi Board. Not only the documents were forged and fabricated but overcharging of the amount was also there at the instance of the accused party.

Hon'ble the Apex Court in number of judgments has made a distinction in custodial and non-custodial interrogation and the consequent result of the investigation. There is a perceptible difference in the results of interrogation when a person who has an order of anticipatory bail in his pocket and goes to the investigating agency. Under such circumstances, he does not cooperate with the investigating agency and does not want to give correct answer to the questions put to him by the Investigating Officer to reach at the bottom of the case as against the person who is in custody or who does not have protection of anticipatory bail. Same view has been held by Hon'ble the Apex Court in cases ***State Vs. Anil Sharma AIR 1997 SC 3806*** and ***Muraleedharan Vs. State of Kerala AIR 2001 SC 1699***.

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 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 in entitled to an order of bail.*

For the reasons as mentioned above and keeping in view the totality of circumstances explained above, I am of the view that it is not a fit case where the petitioners are entitled for anticipatory bail. Custodial interrogation is required for reaching at the bottom of the nexus to unearth modus operandi adopted by the accused in forging documents/bills etc. in crores of rupees by causing financial loss to public. The present petitions qua petitioners namely Laxmi Raj Singh and Vikas Solanki being devoid of any merit are hereby dismissed.

25.10.2018 **(DAYA CHAUDHARY)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No