

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

CRM-M No.39804 of 2018 (O&M)
Date of Decision: 04.12.2018

Rohtash @ Rohtash JakharPetitioner

Versus

State of Punjab and anotherRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. F.S. Virk, Advocate
for the petitioner.

Ms. Rashmi Attri, A.A.G., Punjab.

DAYA CHAUDHARY, J. (ORAL)

CRM No.35283 of 2018

This application has been moved for placing on record
Annexures P-6 to P-8.

Criminal Misc. Application is allowed and Annexures P-6 to
P-8 are taken on record.

CRM-M No.39804 of 2018

Petitioner-Rohtash @ Rohtash Jakhar has filed the present
petition under Section 438 Cr.P.C for grant of anticipatory bail to him in
case FIR No.46 dated 31.03.2018 registered under Sections 496 and 420
IPC at Police Station Division No. 6, Jalandhar.

Learned counsel for the petitioner submits that the petitioner
has falsely been implicated in the case, whereas, no offence is made out
under Sections 406 and 420 IPC. Said FIR was registered on the basis of

complaint made by Rupinder Singh against the petitioner and co-accused Soni Gill @ Gurvinder Singh. As per allegations levelled in the complaint, the petitioner and co-accused sold the car to the complainant for sum of Rs.20 lacs but they failed to deliver the documents to the complainant. The complainant repaired the car and spent about Rs.20 lacs on it but still he is unable to drive in absence of documents. Learned counsel further submits that the facts have been twisted by the complainant as the petitioner and co-accused are dealers. No Objection Certificate was given to the complainant, which was prepared on 17.03.2017. It was sent through courier and it was received by the complainant in the month of June, 2017. Learned counsel also submits that other documents of the car were also sent through courier which were duly received. It has also come in investigation that the documents were delivered at the exact place but received by someone else on behalf of the complainant. Learned counsel also submits that there is an un-explained delay of two years in filing the complaint and three years in lodging of FIR, which doubts the allegations of the complaint. The possession of car is already with the complainant. The case is based on documentary evidence and nothing is to be recovered from the petitioner. The custodial interrogation of the petitioner is not required.

Learned State counsel as well as learned counsel for the complainant have opposed the submissions made by learned counsel for the petitioner on the ground that it is a case of fraud committed upon the complainant. There was a manipulation on the part of the petitioner, whereas, no documents were delivered to the complainant. A deal cannot be finalized unless all documents are given to the purchaser. Even no action has been taken by the petitioner against courier person and no enquiry was

conducted as to whom the documents were delivered. Learned counsel also submits that there is no dispute regarding the delivery of car and payment of the amount of sale consideration. There is no document on record to prove that the documents of the car were delivered whereas it has been alleged to be delivered to some un-known person, who is not related to the complainant.

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

The facts of the case and allegations in the FIR are not disputed. It is not disputed that the payment was made by the complainant and in lieu thereof, the car was given in possession with 'NOC' only and subsequently, other documents were to be sent by the petitioner. As per case of the petitioner-accused, the documents were sent through courier, which were duly received, but who received the documents is not known. It has not been proved or informed neither by the courier agent or by the petitioner as to whom the documents were delivered. Even no action has been taken against the courier person.

Without documents, the car cannot be driven. Moreover, it was the duty of the owner of the car to get the duplicate documents, in case, the original were missed/misplaced but for that also, even no complaint has been made or no action has been taken against courier agent. During arguments also, learned counsel for the complainant has stated that in case, said amount of Rs.20 lacs is returned, the complainant he would be satisfied and will not pursue the litigation. He has also stated that he is ready to return the car on return of amount but that offer is also not acceptable to the

petitioner.

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 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 allegations levelled against the petitioner, no ground is made out to grant anticipatory bail to him and the present petition being devoid of any merit is, hereby, dismissed.

(DAYA CHAUDHARY)
JUDGE

04.12.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No