

Sr. No.102

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

**CRM-M-40695-2018
Date of decision:17.09.2018**

Tarkeshwar Yadav

.....Petitioner

versus

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Jitender Singh Dadwal, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

This is a second petition filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No. 326 dated 01.08.2018 registered under Sections 420, 336, 34 IPC at Police Station Salem Tabri, District Ludhiana.

Before proceeding further it deserves to be pointed out that the petitioner had earlier filed CRM-M-37009-2018 for the same purpose. After arguing for some time, when the Court was not agreeing with the arguments raised by learned counsel for the petitioner; then the same was got dismissed as withdrawn; vide Order dated 28.08.2018. Thereafter, the present petition has been filed.

The allegations against the petitioner, as contained in the FIR are that ASI Mahinder Singh along with H.C. Gurdeep Singh, Constable Parminder Singh, Constable Lovepreet Singh were in patrol in connection with checking of suspected elements. This police party was present at Jalandhar by pass Chownk. At that time an informer informed the above

said ASI that the petitioner, who resides at Jassian Road and has taken a shop on rent at Bharti Colony, near Sidhi Provision Store, Salem Tabri, illegally deals in gas cylinder. He takes the gas cylinders from different gas agencies in illegal manner without any license. After taking these gas cylinders, the petitioner refills the small gas cylinders by drawing the gas from big gas cylinders without any permission from the competent authority, in an illegal manner. After refilling the gas cylinders; the petitioner sells those small cylinders at high rates. In this process he supplies gas in small cylinders short in quantity; as compared to the quantity represented on the cylinder. It was further alleged that for carrying out this business, the petitioner had employed one Mahesh Kumar; as labour at his shop. Both of them are doing the illegal job of refilling the small gas cylinders by transferring gas from the big gas cylinders, which are taken from various gas agencies in illegal manner. Further information given was that due to lack of safety measures during refilling; the gas cylinders may leak and cause fire in the area. The above said ASI Mahinder Singh got this information and believing this information to be true, a ruqa was sent to the police station; for the registration of the FIR. Accordingly the present FIR came into effect.

While arguing the case learned counsel for the petitioner has submitted that offences alleged against the petitioner are under two sections, namely, Section 420 IPC and Section 336 IPC. It is contended by learned counsel that Section 336 IPC is a bailable offence. So far as Section 420 IPC is concerned, the offence is not made out from the bare reading of the FIR; because there is no allegation; by any person who might have been cheated by the present petitioner. Hence, the essence of the argument of

learned counsel for the petitioner is that since no person, who has been cheated in this case, has come forward to make a complaint, therefore the offence under Section 420 IPC can not be alleged against the petitioner. Accordingly it is submitted by learned counsel, that the petitioner deserves to be released on anticipatory bail. It is further contended by learned counsel for the petitioner that since the recovery has already been effected from the co-accused, therefore, no recovery is to be made from the petitioner and hence no purpose would be served by keeping the petitioner in custody.

However, this Court does not find itself in agreement with the arguments raised by learned counsel for the petitioner. A bare reading of the definition of 'Cheating' in Section 415 IPC shows that, cheating can be with anybody and not necessary with a complainant. Otherwise also, any person can give information regarding crime. In any case, as per the allegation the petitioner had been receiving the multiple gas cylinders from various gas agencies and was using that for commercial purposes by refilling it in small gas cylinders; without any license or permit. It is a positive case of the informant that besides flouting safety measures, the petitioner was also refilling the gas cylinders in less quantity; and not as per the capacity of the cylinders. Therefore, on the face of it; it can not be said that the offence under Section 420 IPC is not made out from the facts alleged in FIR. It is a different matter, whether this allegation turns out to be correct or not after the investigation. But at this stage, the argument of learned counsel for the petitioner that offence under Section 420 IPC is not made out from the reading of the allegations; can not be countenanced by the Court. May be, during investigation, even the informant turns out to be

a person cheated by the petitioner.

The next argument of learned counsel for the petitioner, that the recovery has already been effected by the police from the co-accused, therefore, the custody of the petitioner is not required for any investigation purposes also does not impress this Court. As per the allegation, it was the petitioner who is the master of the business. The other co-accused who has been arrested is, his employee only. Therefore, the actual proportions of the offence can be discovered only after interrogating the petitioner in the right earnest. The police is yet to find out the source of supply of big gas cylinders as well as the refilled small gas cylinders, both these being illegal, *per se*. No gas company has so far issued the small gas cylinders with approved specification. Therefore, this can not even be the argument of learned counsel for the petitioner, at this stage, that he was carrying out a legal business in a legal manner. The spread of illegal business of the petitioner can be unearthed only by custodial interrogation.

Besides the above illegalities, the petitioner was carrying out the business which is too hazardous, which could have caused unmanageable catastrophe, had it not been discovered, and he was doing all this in an illegal manner; and only for making money. This makes the offence much more serious.

It is a well established law that the investigation carried out by the police when an accused is under the protection of the Court Order is qualitatively and quantitatively different; than the investigation which is carried out by the police when the accused is not having sense of protection of the Court Order. No doubt the accused also have a right to liberty, however, that right to liberty has to be subject to the reasonable interest of

the society as well. Therefore, the provision of Section 438 Cr.P.C. is prescribed only by way of an extraordinary power given to the Court. For exercising this power, the Court has to be reasonably satisfied of the factors which are extenuatory in character and thus, leading towards the innocence of the accused. However, in the present case, this Court does not find any extenuating circumstance, to persuade this Court to exercise its extraordinary power to grant anticipatory bail to the accused, and thereby, to prevent the police from carrying out the investigation in a proper manner.

Accordingly, this Court finds no merit in the present petition, the same is hereby dismissed.

Needless to say that nothing said herein above, shall be deemed to be an expression on merits of the case, during the trial, if any, that follows from the FIR.

17th September, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*