

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

CRM-M No.41212 of 2017

Date of decision : 23.10.2018

Sanjay Kumar Srivastav

.....Petitioner

Versus

State of U.T., Chandigarh

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Vibhor Bansal, Advocate for the petitioner.

Mr. J. S. Toor, APP for U.T., Chandigarh.

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DAYA CHAUDHARY, J.

Petitioner Sanjay Kumar Srivastav has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 (for short – ‘Cr.P.C.’) for grant of anticipatory bail to him in case FIR No.201 dated 11.10.2017 under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860 (for short – ‘IPC’), registered at Police Station – Sector-3 (North), Chandigarh.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case whereas no offence is made out against him and he was not involved in the commission of offence. Earlier FIR No.128 dated 29.07.2016 under Sections 409, 420, 120-B IPC and Sections 8, 9 and 13 of the Prevention of Corruption Act, 1988 was registered at Police Station West, Sector 11, Chandigarh, wherein

allegations against the petitioner were of leakage of JBT and TGT papers conducted by Chandigarh Education Department. On the same set of allegations this FIR has been registered just to harass the petitioner by involving him in a false case, which is misuse of process of law. Learned counsel further submits that in the earlier FIR, he was granted bail under Section 167(2) Cr.P.C. The present FIR has been registered by the U.T., police just to save their own skin from the departmental proceedings. The petition filed by the petitioner before the Court below has been dismissed without mentioning any specific reason, whereas the petitioner is ready to join investigation and to abide by all the terms and conditions to be imposed by this Court or by the trial Court. He has joined investigation as and when directed by this Court. In support of his arguments, learned counsel for the petitioner has relied upon judgments of Hon'ble Apex Court in cases ***Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation & Anr. 2013 (2) R.C.R. (Criminal) 819*** and ***T.T. Antony Vs. State of Kerala 2001(3) R.C.R. (Criminal) 436***.

Learned counsel for respondent-U.T., Chandigarh has opposed the submissions made by learned counsel for the petitioner on the ground that though the petitioner has joined investigation but he has not cooperated with investigating agency. Not only the allegations are different in both the FIRs but the examinations are also different and leakage of papers was there on the part of the petitioner and other co-accused. Petitioner was given various opportunities but he did not cooperate with the investigating agency as neither any information required by the investigating agency was

supplied nor the queries put by the Investigating Officer were responded. Learned counsel further submits that the petitioner has failed to produce his identity and has not answered the query relating to talk on mobile phone with other co-accused.

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

Connected petition *i.e.* CRM-M No.701 of 2018 for anticipatory bail moved by co-accused Satinder Hooda has been dismissed by this Court today itself by passing a detailed speaking order. Same set of allegations are there against the present petitioner namely Sanjay Kumar Srivastav. He has also not cooperated in the investigation as required information has not been supplied to the Investigating Officer. It has come in the statement of certain candidates that the papers were supplied by the petitioner or at his instance by other co-accused, which shows the involvement of the petitioner not only in leakage of the JBT examination papers but in the subsequent examinations of TGT and other examination as well. Not only papers were leaked but the same were sold for consideration as has been admitted by the other candidates.

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 against the petitioner and role played by him and also the fact that the petitioner has not cooperated in the investigation as neither the documents nor the relevant documents/information have been supplied in spite of giving opportunity, I am of the view that anticipatory bail is a relief, which is not to be granted in a routine manner but under the exceptional circumstances. In the present case the petitioner was directed to join investigation and cooperate in the investigation but still he did not cooperate and did not supply the relevant

documents. Therefore, the custodial interrogation is required in the present case.

By considering the allegations levelled and the conduct of the petitioner, there is no reason to grant anticipatory bail or to extend the interim order passed in his favour. Accordingly, the present petition being devoid of any merit is, hereby, dismissed.

23.10.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No