IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No.701 of 2018

Date of decision : 23.10.2018

Satinder Hooda

......Petitioner

Versus

State of U.T., Chandigarh

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Ajay Ghangas, Advocate for the petitioner.

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

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DAYA CHAUDHARY, J.

Petitioner Satinder Hooda 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 – 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. The present FIR was registered on the basis of statement given by complainant Kuldeep Singh, Inspector, SIT, Police Station 31, Chandigarh. As per allegations in the present FIR, the petitioner was involved in another case *i.e.* 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 registered at

Police Station West, Sector 11, Chandigarh, relating to leakage of the papers of JBT, TGT and PGT, which were conducted in the months of January/February, 2015. He was arrested in that case on 22.11.2016. Thereafter, the petitioner along with other co-accused appeared before learned Magistrate and the complainant party filed an application for obtaining police remand, which was granted. After investigation, the petitioner was sent in judicial custody. In that case the petitioner was released on regular bail by the trial Court on 15.12.2016. Challan was presented and the petitioner was appearing in the Court on each and every date of hearing. Learned counsel further submits that the present FIR was registered subsequently on 11.10.2017 relating to the same occurrence as was in FIR No.128 dated 29.07.2016 and name of the petitioner was not mentioned. The second FIR cannot be registered relating to the same occurrence and allegations. In the subsequent FIR neither the petitioner has been named nor any specific role has been attributed to him. Only on obtaining legal opinion, the present FIR has been registered. At the end, learned counsel for the petitioner submits that the present FIR is misuse of process of law and it is a case of double jeopardy. The petitioner has joined investigation as and when asked for by the Investigating Officer and as per direction issued by this Court. No purpose would be served by sending the petitioner behind the bars.

Learned counsel for respondent-UT, Chandigarh has not disputed the factum of joining of investigation. However, he has opposed grant of anticipatory bail to the petitioner on the ground that the petitioner has not cooperated in the investigation and he has also failed to produce the documents of his identity. He has refused to answer certain queries put by the Investigating Officer. Learned State counsel further submits that certain questions have come to the notice of the Investigating Officer regarding involvement of the petitioner in leakage of the papers. He also submits that during interrogation, the petitioner has disclosed in his disclosure statement that he along with four more candidates of TGT, in connivance with accused Dinesh Yadav and Mithlesh Pandey alias Guruji, were involved in leakage of paper at Lukhnow. The CDR record of Mobile No.9991155688 of accused-petitioner was procured, which shows his involvement in the leakage of not only the papers of the earlier exam but the subsequent exams also. By considering those allegations, the subsequent FIR was registered, which relates to different examination and not to the earlier one. In the subsequent examination the involvement of the petitioner was found. For verifying those queries, the custodial interrogation of the petitioner is required.

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

As per the allegations in the present FIR, which was registered on the report of Inspector Kuldeep Singh, on 22.08.2017 Lalit Kumar was arrested by Special Investigation Team, in case FIR No.128 dated 29.07.2016. During interrogation, Lalit Kumar disclosed that he knew one Suresh Kumar Yadav. He along with other five candidates had got JBT papers of Chandigarh Administration on 31.01.2015 at Rewari (Haryana) and it was of JBT examination dated 01.02.2015. Suresh Yadav told to arrange the candidates for availing TGT leakage paper of Chandigarh Education Department which was to be held on 14.02.2015 to 28.02.2015. He could not arrange any candidate but he gave mobile number of Suresh Yadav to a person who was known as Pardeep Lochav. Said Pardeep Lochav contacted Suresh Kumar Yadav for getting the TGT paper for his wife Anju Devi and she along with other TGT candidates got the papers at Nazafgarh, Delhi. When co-accused Ranveer joined investigation on 29.08.2017, he disclosed that he along with Lalit, Nitu Yadav and Mamta and two other candidates also got the paper at Rewari one day prior to the date of examination in connivance with Suresh Yadav and paid ₹ 6,00,000/- to Suresh Yadav. He further disclosed that he was in touch with Suresh Yadav who told him to provide the TGT leaked papers at Nazafgarh, Delhi. Not only this but other candidates also got the papers and paid amount as disclosed by co-accused. The present petitioner was stated to be arrested in the earlier FIR and disclosed that he along with his wife Poonam, his relative Pinki, Monika and Amita, all residents of Sonipat, got TGT main paper and General Studies paper through Mithlesh Pandey alias Guruji, real name Sanjay Kumar Srivastava, and he and his wife paid ₹ 20,00,000/- to Sanjay Kumar Srivastava (Guruji).

The anticipatory bail has been sought only on the ground that the incident is the same for which two FIRs have already been registered. The petitioner is on regular bail in the earlier FIR. The earlier FIR was relating to JBT papers, whereas the present FIR is relating to TGT papers. For unearthing the scam relating to TGT papers, wherein involvement of the petitioner has been alleged to be there, the custodial interrogation is required.

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:*
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> > *(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.

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 neither the petitioner has cooperated in the investigation 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 **(DAYA CHAUDHARY)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No