

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

CRM-M No. 8451 of 2018

Date of decision: 13.03.2018

Harkesh Singh

....Petitioner.

VERSUS

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Sumeet Puri, Advocate,
for the petitioner.

Mr. V.G. Jauhar, Senior DAG, Punjab.

RAJ SHEKHAR ATTRI, J.(Oral)

CRM No. 9093 of 2018

This is an application under Section 482 Cr. P.C. for placing on record Annexures A-1 to A-3. The same is allowed, subject to all just exceptions.

Documents annexures A-1 to A-3 are taken on record.

CRM-M No. 8451 of 2018

The present petition has been filed under Section 438 Cr.P.C., for grant of pre-arrest bail to the petitioner in case FIR No. 326 dated 18.12.2015 registered for the offences punishable under Sections 406, 420, 467, 468, 506, 120-B of the Indian Penal Code (for short 'IPC') at Police Station City Khanna, District Khanna.

Learned State counsel has placed on file photostat copy of the hand written receipt dated 30.08.2014 for a sum of Rs. 10,089.95 as well as the statement of the petitioner recorded by the Deputy Superintendent of Police, Khanna during the enquiry along with the statement of the other

witnesses and extract from the case diary. The same are taken on record.

It is the case of the prosecution that petitioner alongwith his associates formed a Company to commit fraud with the general public. They collected money under the garb of providing exorbitant rate of interest. It has been submitted that crores of rupees have been collected and did not return the same alongwith agreed interest.

I have heard learned counsel for the petitioner and learned State counsel and also gone through the material available on record.

In this case, an initial enquiry was conducted wherein petitioner suffered a statement before the Deputy Superintendent of Police and admitted that he was the agent of the company which was run in the name and style 4 X Forever. He also admitted that in fact he has been appointed as a Secretary with a Co-operative Society at Village Raye Dharana.

Learned State counsel has placed on record hand written sheet, signed by the petitioner admitting receiving an amount of Rs. 10089.95 Police wants to recover an amount of Rs. 3.5 crore from the petitioner which has been appropriated by him alongwith his associates. To the mind of the Court, custodian interrogation is necessary, therefore, petitioner is not entitled for the concession of anticipatory bail.

It has been argued on behalf of the petitioner that Manjit Kaur wife of the petitioner has already been given benefit of anticipatory bail by the Co-ordinate Bench of this Court in *CRM-M No. 5248 of 2017 vide order dated November 22, 2017*.

The Hon'ble Supreme Court in case **Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors**, *AIR 2011 SC 312* while considering the judgment passed in *Gurbaksh Singh Sibbia*

and Others v. State of Punjab, (1980) 2 SCC 565 has made out following factors and parameters which the Court is required to take into consideration while dealing with the anticipatory bail.

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. 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;*
- iii. The possibility of the applicant to flee from justice; iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. 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 accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. 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.'*

The Hon'ble Supreme Court further observed that the purpose for introducing Section 438 in the Code of Criminal Procedure, 1973 that it was felt imperative to evolve a device by which an alleged accused is not compelled to face ignominy and disgrace at the instance of influential people who try to implicate their rivals in false cases.

The power to grant anticipatory bail is an exceptional one and should be exercised if special case is made out and not in general cases. The Constitution governing exercises on behalf of discretion for granting anticipatory bail are materially different from those of an application in regular bail. An anticipatory bail not to be granted as a matter of right and should be granted only if special case is made out and Court is convinced that a person should not misuse his liberty.

To the mind of the Court, this case is distinguishable on facts. Thus, no case is made out to grant bail to the petitioner.

This application is dismissed.

March 13, 2018
Jyoti-3

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no