

S.No.102

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

**CRM-M-16406 of 2019 (O&M)
Date of Decision:06.05.2019**

Sukhdeep Singh Petitioner

Vs.

State of Punjab Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Vijay Rana, Advocate
 for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is a petition seeking anticipatory bail to the petitioner in case FIR No.27 dated 08.03.2019 registered under Sections 409, 120-B IPC at Police Station Navi Baradari, District Jalandhar.

The allegations, in brief as contained in the FIR, are that an application was moved by one Amit Sood, who was working as Assistant Manager in Secure Value India Pvt. Ltd. Company, involved in dealing with the loading of the cash in ATM Machines of the Bank. On 27.08.2018, three cash teams members had withdrawn an amount of Rs.2 crore 9 lakhs from ICICI (Currency Chest) PUDA Complex, Jalandhar Branch to load in the ATM Machines. Details of the notes withdrawn from the chest were also mentioned therein. Thereafter, three teams had collected their respective cash and had taken the cash for loading in the ATM Machines. However, at about 04:30 PM, the first team informed the complainant telephonically that an amount of Rs.15 lakh was less in the cash given to them. After receipt of

this information, all the three teams were called back and all the three teams checked their cash mutually. However, none of the remaining two teams were having any excess cash, as compared to their entrustment. After that, the CCTV Footage of the Bank was scrutinised and it was found that full amount was issued to the teams by the Bank. Thereafter, the cash loaded in the ATM Machines was also checked. Thereupon, it was found that an amount of Rs.15 lakhs had gone missing in the process. Accordingly, the FIR was lodged by the Police.

Learned counsel for the petitioner has submitted that the alleged occurrence has taken place on 27.08.2018 whereas the complaint has been made only on 30.08.2018. Even thereafter, the Police has converted the complaint into FIR only on 08.03.2019. In the meantime, the Police had conducted an inquiry as well. In that inquiry, out of the total amount given to three teams, Rs.15 lakhs have been found to be missing. It is further argued by learned counsel for the petitioner that no role has been specifically attributed to the petitioner; as such; towards the alleged embezzlement of the amount. It is also submitted that even gunman and driver of the cash Van have been found innocent by the Police. No FIR has been lodged against the gunman and driver of the cash Van. Immediately after having been found innocent, the gunman and driver had left the job as well. Therefore, this would indicate towards their culpability in the crime. It is further submitted that, in fact, the complainant himself is to be blamed in this entire matter. On the contrary, there are not even allegations against the petitioner, which might involve him in the criminal activity in this case.

Of course, the accused as a citizen also has a right to life and

liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

In the present case, as per the complaint, it is not even disputed that an amount of Rs.2.09 crores was withdrawn from the chest of the Bank. This fact has even been verified by the complainant, from the CCTV footage installed at the Branch, on the same day. It has also come on record that the full amount was handed over to the respective three teams. All the three teams had checked the respective cash in their hands at the time of taking of the cash. Subsequently, it is only first team which has reported the shortage of Rs.15 lakhs. The petitioner happens to be custodian of the cash of the first team only. Therefore, this Court does not find any

extenuating circumstance in favour of the petitioner, showing his ex-facie innocence qua the allegations levelled against him, so as to exercise its extra-ordinary power under Section 438 Cr.P.C, to grant anticipatory bail to the petitioner.

The argument of the learned counsel for the petitioner that the gunman and the driver have been wrongly found to be innocent by the Police and they had left the job immediately, reflecting upon their culpability, does not find any favour of this Court. Merely because one of the co-accused has been found to be innocent, at this stage, by the Police would not make the petitioner innocent by any means. Otherwise also, leaving of the job by the abovesaid gunman and driver is totally insignificant. It is quite possible that after this incident those persons might have left the job realising the risk of being involved in employment of cash loading everyday.

Counsel for the petitioner has also referred to the alleged inquiry held by the Police. Firstly, this Court finds that such an inquiry cannot be recognised by Court of law, being extra statutory in character. Otherwise also, the inquiry has not exonerated the petitioner as such. Rather the finger has been raised only qua the team of the persons; in which the petitioner was working as a custodian of the cash.

Since as per the complaint, the petitioner and his co-accused were given the cash, which was even checked by them, before leaving the place, therefore, how the cash has gone missing can be explained only by the petitioner and his co-accused. If at this stage, the petitioner is granted anticipatory bail, the Police would not be able to unearth the modality

adopted by the petitioner and his co-accused for embezzlement of the cash of the Bank. Therefore, in the considered opinion of this Court, granting anticipatory bail to the petitioner would hamper the free and fair investigation of the case by the Police.

In view of the above, finding no merits in the petition, the same is hereby dismissed.

May 06, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No