IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. M-55581 of 2018
Date of decision: 25.02.2019

Majid ..**Petitioner**

Versus

State of Haryana ..**Respondent**

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Himanshu Sharma, Advocate
for the petitioner.

Mr. R.S. Doon, AAG, Haryana
for the respondent -State.

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<u>Daya Chaudhary, J.</u>

The present petition has been filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail to him in case FIR No.274 dated 11.06.2018 registered under Sections 420, 467, 468, 471 read with Section 120-B IPC at Police Station Dharuhera, District Rewari.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case whereas he was not involved. The petitioner is 63 years of age and is dependent upon the agriculture. The petitioner approached the complainant Bank for taking the loan for improving his agriculture activities. The petitioner supplied all the documents of his land as demanded by the complainant Bank and after verification and adopting proper procedure, the loan of ₹3,00,000/- was sanctioned in favour of the petitioner. Learned counsel further submits that the FIR has been registered by the complainant Bank with some ulterior motive. The land of the petitioner was mortgaged with the Bank and all the original documents were with the Bank. Photocopies of those documents were certified by the concerned Patwari and Tehsildar and it cannot be said to be a case of forgery or manipulation of the documents. At the end, learned counsel for the petitioner submits that as per direction issued by this Court on 20.12.2018, an amount of ₹40,000/- has been deposited by the petitioner. Learned counsel for the petitioner has also relied upon judgment rendered by this Court in ***Naresh Kumar vs. State of Punjab, 2010(1) RCR (Criminal) 318*** in support of his arguments.

Learned State counsel has opposed grant of anticipatory bail to the petitioner on the ground that in spite of undertaking given before this Court at the time of issuing notice of motion, the total loan amount has not been deposited by the petitioner and he has deposited only an amount of ₹40,000/- whereas total outstanding amount as assessed by the Bank was to be deposited within a period of one week. Learned State counsel further submits that FIR was registered on the basis of complaint made by Branch Manager, State Bank of India with the allegations that accused-petitioner Majid applied for loan and produced certified copy of *jamabandi* along with loan application in respect of land bearing Khatoni No.218/210 situated in Village Khori Kalan, Tehsil Tapukara, District Alwar (Rajasthan). A certificate issued by Tehsildar concerned was also annexed. The loan was released to the petitioner but it was found that the petitioner has changed the area of land to 3.98 hectare by forging it to be 79.12 marla. One mortgage deed was also executed in favour of the Bank but he did not repay the loan. On inquiry, it was found that in the *jamabandi* submitted by the petitioner, the area of Khasra No.328 was mentioned as 9.04 hectare whereas as per record, the area was 0.04 hectare. It was done in connivance with the Bank Manager, Field Officer and the advocate representing the Bank. During investigation, Branch Manager and Field Officer were arrested. The mortgage deed submitted in the Bank was also found to be fake as no such mortgage deed was ever executed and loan was sanctioned by the Branch Manager, Field Officer and other officials in a fraudulent manner not only to the petitioner but to other several persons also. It was a big scam and about 125 FIRs were registered. At the end, learned State counsel submits that the custodial interrogation of the petitioner is required.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

As per allegations levelled in the FIR, the loan was sought by the petitioner on the basis of forged documents and after obtaining loan, no amount was repaid. In the inquiry, it was found that the petitioner, Branch Manager and Field Officer in connivance with each other sanctioned the loan on the basis of forged documents. Said Bank Officers/Officials were arrested and about 125 FIRs were registered against other persons like the petitioner. At the time of issuing notice of motion on 20.12.2018, an undertaking was given before this Court to pay the total outstanding amount as assessed by the Bank within a period of one week from the date of passing of order i.e. 20.12.2018 but no such amount was deposited except an amount of ₹40,000/-. The petitioner obtained interim order on the basis of undertaking, which was never fulfilled. It is not a single case of the petitioner but others as well, as FIRs have also been registered and huge public amount has been sanctioned as loan to such like persons on the basis of forged documents.

Although at the time of granting bail, the detailed examination of evidence and discussion on merits of the case is not required but reasons thereof are necessary to be mentioned when an accused is charged with economic offences. For exercising this discretion, the facts are necessary to be mentioned.

Economic offences are considered grave offences and in such like offences, huge loss to public fund is there. The nature and seriousness of an economic offence is to be seen at the time of grant of anticipatory bail.

In a number of judgments rendered by this Court as well as by Hon'ble the Apex Court, a distinction has been made in custodial and non-custodial interrogation and the consequent result of the investigation. There is a perceptible difference in the results of interrogation when a person who has got an order of anticipatory bail, goes to the investigating agency. Under such circumstances, such accused does not cooperate with the investigating agency and does not want to give correct answer to the questions put to him by the Investigating Officer to reach at the bottom of the case.

It is also well settled 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.

For the reasons recorded as above and keeping in view the totality of the facts and circumstances of the case and also the fact that huge public amount is involved, I am of the view that it is not a fit case where the petitioner is entitled for anticipatory bail. Custodial interrogation is required just to know the nexus to unearth modus operandi adopted by the accused in connivance with Bank officers/officials in forging documents by causing financial loss to the public.

Accordingly, keeping in view the conduct of the petitioner as discussed above and the facts and circumstances of the case, he does not deserve concession of anticipatory bail and as such, the petition is hereby dismissed.

25.02.2019 **(DAYA CHAUDHARY)**
neetu **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes