

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

101-A

CRM-M-14802-2020

Date of decision : 04.11.2020

Rajbir Singh @ Gulab

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

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

Mr. Sukhbeer Singh, Asstt. A.G. Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

The case has been taken up for hearing through video conferencing.

The petitioner has filed present (first) petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.171 dated 16.09.2018 registered under Sections 454 and 380 of the Indian Penal Code, 1860 in Police Station Sadar Patiala, District Patiala.

The above-said FIR was registered on statement of Gurnaib Singh. In his statement Gurnail Singh alleged theft of 24 batteries from the rack of mobile tower of Vodafone Company in village Raipur Mandlan by some unknown persons.

Vide order dated 07.07.2020 passed by this Court, the petitioner was granted interim anticipatory bail with direction to join the investigation.

The petition has been opposed by the learned State

Counsel in terms of reply filed in connected case bearing No.CRM-M-9238-2020.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the record.

Learned Counsel for the petitioner has argued that the FIR was registered in the year 2018 against unknown persons on the basis of statement given by Gurnaib Singh. The petitioner has been falsely implicated on basis of disclosure statement of co-accused Manpreet Singh. There is no cogent evidence linking the petitioner with the alleged offences. The petitioner has also been falsely implicated in another case. In compliance of order dated 07.07.2020 passed by this Court, the petitioner has joined the investigation and his custodial interrogation is not required in the case.

On the other hand, learned State Counsel has acknowledged that in compliance of order dated 07.07.2020 the petitioner has joined the investigation but vehemently opposed the petition and submitted that custodial interrogation of the petitioner is required for proper/thorough investigation of the case and also for effecting recovery of stolen batteries which is yet to be made. Therefore the petition may be dismissed.

In ***P. Chidambaram Vs. Directorate of Enforcement (SC)***
: ***2019(4) R.C.R.(Criminal) 875*** Hon'ble Supreme Court observed as under :-

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C., 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-

arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

In ***State Rep. by The CBI Vs. Anil Sharma : (1997) 7 SCC***

187, the Supreme Court held as under:-

"4. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

In ***Jai Prakash Singh Vs. State of Bihar and another :***

(2012) 4 SCC 379, Hon'ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See also ***D.K. Ganesh***

Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v.

Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305).

Keeping in view the facts and circumstances of the case particularly the fact that custodial interrogation of the petitioner is necessary for thorough investigation of the case, involvement of the petitioner in commission of the crime and effecting recovery of stolen batteries in case of such involvement of the petitioner and collection of material evidence in this regard, I am of the considered view that the petitioner does not deserve grant of anticipatory bail.

In view of the above discussion, the present petition is dismissed and interim anticipatory bail order is vacated.

04.11.2020

Kothiyal

**(ARUN KUMAR TYAGI)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No