

CRM-M-24979-2020

Date of decision: 10.09.2020

PINKI

.....Petitioner

Versus

STATE OF HARYANA AND ANR.

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGIPresent : Mr. S.K. Tripathi, Advocate
for the petitioner.Mr. Naveen Singh Panwar, D.A.G., Haryana
for the respondent No. 1-State.Mr. Sumit Gahalawat, Advocate with
Mr. Rahul Garg, Advocate
for respondent No. 2-complainant.

ARUN KUMAR TYAGI, J (ORAL)

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

The petitioner has filed the present (first) petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.297 dated 10.07.2020 registered under Sections 408, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 at Police Station Pataudi, Gurugram.

The above said FIR was registered on written complaint of Pawan Singh, Manager, Platinum Motocop, Pataudi who alleged that Ajay Goyal who is employed in Platinum Motocop as Accountant/cashier since last three years has misappropriated funds by cheating and forgery and admitted having committed theft of Rs.4,11,800/- and action may be taken against him. The police investigated the case and arrested Ajay Goyal. The investigation

revealed misappropriation of amount of Rs.25,90,778/- by Ajay Goyal who in his disclosure statement implicated the petitioner for her involvement in the crime and transfer of part of money to her bank accounts.

Apprehending her arrest, the petitioner has filed the present petition for grant of anticipatory bail.

The petition has been opposed by learned State Counsel and learned Counsel for the complainant in terms of their replies filed by way of affidavit of Veer Singh, HPS, Assistant Commissioner of Police, Pataudi, Gurugram on behalf of respondent No. 1-State and affidavit of Ms. Shruti Chopra authorised representative of the Complainant-Platinum Motocorp LLP on behalf of respondent No. 2-complainant.

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

Learned Counsel for the petitioner has argued that the petitioner had performed marriage with co-accused Ajay Goyal on 28.06.2020 just seven days before the alleged theft. The petitioner has been falsely implicated in the case with ulterior motive in connivance with the police officials due to being his wife. Her husband had resigned from the post of Accountant on 03.03.2020 and the petitioner had resigned on 16.06.2020. Husband of the petitioner was beaten, illegally detained and forced to make alleged confession of theft. The petitioner and her husband Ajay Goyal were working in the same office for the last about three years and were fast friends before their marriage. They used to take money from each other. No huge amount was transferred to the account of the petitioner by Ajay Goyal and part of the money transferred was Shagun money at the time of marriage. The petitioner had no concern with the case of misappropriation or theft. No recovery is to be effected from the petitioner and her custodial interrogation is not required in the case.

On the other hand, learned State Counsel and learned Counsel for the complainant have submitted that the petitioner and her husband co-accused Ajay Goyal were employed in the complainant

company for the last three years and had misappropriated amount of more than Rs.25,90,778/-. Amount of Rs. 7,33,619/- were transferred in the account of the petitioner at HDFC Bank and amount of Rs. 33,400/- was transferred in the account of the petitioner at Punjab National Bank. Custodial interrogation of the petitioner is required to recover the above mentioned amounts and to unearth the truth and take the investigation to its logical end. The petitioner does not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

In P. Chidambaram v. 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.

70. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C., 1973 is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

72. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There

may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State Rep. by The CBI v. Anil Sharma (1997) 7 SCC 187, the Supreme Court held as under:-

"6. 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."

73. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B.* (2005) 4 SCC 303, it was held as under:-

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily

will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

In **Jai Prakash Singh v. 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 enroped 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.**)

Further, socio-economic offences constitute a class apart and need to be visited with different approach in matter of bail. Since socio-economic offences have deep rooted conspiracies affecting the moral fibre of society and causing irreparable harm, the same have to be viewed seriously. Reference in this regard may be made to ***State of Bihar and another Vs. Amit Kumar @ Bachaha Rai : 2017 (13) SCC 751*** and ***Rohit Tandon Vs. Directorate of Enforcement : 2018(11) SCC 46.***

Keeping in view the above referred legal perspective, the facts and circumstances of the case, the fact that custodial interrogation of the petitioner is required for thorough investigation of the crime committed and the possibility of the petitioner influencing the witnesses or tempering with evidence and fleeing from justice, 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 for grant of anticipatory bail to the petitioner is dismissed.

10.09.2020
kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No