

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

201

**CRM-M-35047-2020
Date of decision : 16.12.2020**

Maninder Pal Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. B.S. Sewak, Addl. A.G., Punjab
for respondent No.1-State.

ARUN KUMAR TYAGI, J (ORAL)

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

The petitioner has filed present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.3 dated 24.04.2020 registered under Sections 406, 420 and 120-B of the Indian Penal Code, 1860 in Police Station NRI, District Jalandhar.

The above-said FIR was registered on complaint made by Dalbir Kaur. In her complaint Dalbir Kaur alleged that she invested amount of Rs.6,00,000/- in the year 2012 and Rs.14,00,000/- in the year 2013 with the company run by the petitioner and amount of Rs.40,00,000/- was to be paid on maturity after 66 months. Father of the complainant also deposited amount of Rs.3,00,000/- with the company of the petitioner. The petitioner did not return the amount and misappropriated the same.

The petition has been opposed by learned State Counsel in terms of reply filed by way of affidavit of Sh. Harbhajan Singh, PPS, Deputy Superintendent of Police, NRI Sub Division, Jalandhar in the Registry which is taken on record.

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 petitioner did not commit any fraud/cheating. The petitioner did not have any intention of not repaying the amount invested. The company run by the petitioner suffered losses on account of fraud committed by his employees on him and FIR No.295 dated 08.11.2018 under Sections 408, 420, 455, 467, 468, 471, 201 and 120-B of the IPC was registered in Police Commissionerate Jalandhar against his employees. The petitioner is ready to pay the amount by sale of the assets of the company. The case involves dispute of the civil nature which has been wrongly given the colour of criminal offence. The petitioner is ready to join the investigation. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel has submitted that the petitioner duped the complainant and his father and misappropriated the amount invested. The petitioner is also involved in five other cases of similar nature. The petitioner is alleged to have siphoned off the money deposited in his company to his business in Dubai. Custodial interrogation of the petitioner is required for thorough investigation of the case and recovery of the amount. The petitioner does not deserve grant of anticipatory bail. Therefore the petition may

be dismissed.

It is now well settled that the power under Section 438 Cr.P.C., 1973 is an extraordinary power and the same has to be exercised sparingly in exceptional cases.

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***).

The Courts have been granted power to grant anticipatory bail to protect against motivated criminal litigation instituted at the instance of unscrupulous litigants animated by malice or political vendetta. Grant of anticipatory bail is an extra-ordinary remedy and is not, therefore, intended to be granted in every case. Number of factors including nature and gravity of the offences, quantum of sentence, likelihood of the accused absconding, intimidating or influencing the witnesses or tempering with the evidence or committing similar offences have to be taken into consideration. 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 facts and circumstances of the case and material on record prima facie showing involvement of the petitioner in the crime, also the fact that custodial interrogation of the petitioner is necessary for thorough investigation of the case, for ascertaining the modus operandi and involvement of other persons in commission of the crime, effecting recovery of the amount in question from the petitioner and also collection of material evidence available 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 for grant of anticipatory bail is dismissed.

16.12.2020

Kothiyal

**(ARUN KUMAR TYAGI)
JUDGE**

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