IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

201

CRM-M-14199-2020 (O&M)
Date of decision: 08.01.2021

Sanjay Kumar .....Petitioner

Versus

State of Haryana and another .....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Balkar Singh, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
for respondent No.1-State.

Mr. Premjit Singh Hundal, Advocate
for respondent No.2.

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ARUN KUMAR TYAGI, J. (ORAL)

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

CRM-28896-2020 and CRM-28901-2020

For the reasons mentioned in the applications, the same are allowed and respondent No.2 is exempted from filing certified copies of Service Provider Agreement dated 10.10.2017 and Account Statement of the petitioner and extracted/typed/photostat copies of which are taken on record as Annexures R-2/1 and R-2/2 respectively.

CRM-M-14199-2020

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.33 dated 05.03.2019 registered under Sections 406, 420 and 120-B of the Indian Penal Code, 1860 at Police Station Sadhaura, District Yamuna Nagar.

The above said FIR was registered on written complaint submitted by Anju Singla, Branch Head of Axis Bank, Sadhaura Branch, District Yamuna Nagar. In the complaint it was alleged that fraud had occurred in the accounts of account holders whose names were given in Annexure-1 to the complaint and the complaint was being lodged against Sanjay Kumar, Proprietor, M/s Harsh Jewellers (the petitioner), who was empanelled for assessment or valuation of the gold of the customers/borrowers who approached the bank for gold loans and gold assessment and valuation had been done by him. The amount involved is Rs.1,98,33,156/-. Consequent to registration of FIR, the matter is under investigation.

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

The petition has been contested by respondent No.1-State in terms of replies filed by way of affidavits of Ashish Chaudhary, HPS, Deputy Superintendent of Police, Bilaspur (Yamuna Nagar) and by respondent No.2 in terms of reply filed by way of affidavit of Sh. Harjit Singh, Regional Head, Fraud Control Unit, Axis Bank Ltd.

I have heard arguments addressed by learned Counsel for the petitioner, learned State Counsel and learned Counsel for respondent No.2 and gone through the relevant record.

Learned Counsel for the petitioner has argued that the petitioner was assessor/valuer on the panel of respondent No.2 bank and was required to make assessment or give valuation of the gold ornaments/jewellery of the customers of respondent No.2 bank who wanted to take loan by mortgaging gold. The bank was at liberty to accept or not to accept his report and to give or not to give the loans to the customers who approached it. The petitioner had assessed gold ornaments/jewellery as per the methods available and could not detect that the same were made of spurious gold as the petitioner could not cut or melt the same. Subsequently, respondent No.2 bank had found the jewellery to be spurious by testing on cutting of the same at the time of audit by central authority in March, 2018. There is no evidence to connect the petitioner with the offenders who had taken loans by mortgaging spurious gold. The petitioner was not beneficiary of any fraud committed. The loan amount can be recovered by the bank from the persons concerned by availing legal remedies. The petitioner is ready to join the investigation and his custodial interrogation is not required in the case for making any recovery. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel has argued that the bank has been defrauded of an amount of Rs.1,98,33,156/- by the account holders by taking loan by mortgaging spurious gold. The petitioner is the main kingpin of the fraud committed as he had declared spurious gold as genuine. Loan amounts were disbursed on the basis of certificates of genuineness of the gold given by the petitioner. Custodial interrogation of the petitioner is required for thorough investigation of the case, discovering the facts regarding modus operandi, involvement of other persons in the crime and collection of material evidence in this regard. The petitioner does not deserve grant of anticipatory bail and the petition may be dismissed.

Learned Counsel for respondent No.2 has argued that the petitioner had entered into Service Provider Agreement with respondent No.2 bank on 10.10.2017. As per clause 6.1 of the agreement it was agreed to by the petitioner that in case of gold valued by the petitioner turned out to be spurious then he will buy-back the gold for the amount valued or any other amount decided by the bank and in case of any criminal omission observed on his part during valuation process then the bank shall be at liberty to initiate criminal action against him. As per clause 6.2 of the agreement, the petitioner has agreed to indemnify the bank. At the time of hearing on 05.06.2020, the Court was informed that 'the interest of bank as such is protected in as much as the account of the petitioner had been frozen which has a cash deposit of approximately the same amount' which statement was incorrect as on that date the amount of Rs.28,977/- was lying in his account. The petitioner does not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

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 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***).

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."*

Keeping in view the facts and circumstances of the case which prima facie show involvement of the petitioner in defrauding of respondent No.2 bank for disbursement of loan against spurious gold mortgaged by as much as 31 account holders, the fact that custodial interrogation of the petitioner is necessary for thorough investigation of the case, for discovering the facts regarding modus operandi and involvement of other persons in commission of the crime 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 to the petitioner is hereby dismissed and order granting interim anticipatory bail to the petitioner is vacated.

08.01.2021 **(ARUN KUMAR TYAGI)**
Vinay **JUDGE**

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