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

**CRM-M-33705-2021**
**Date of Decision: 25.08.2021**

Yashpal Kapoor

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. T.S. Grewal, Advocate for the petitioner.

Mr. Deepak Manchanda, Additional Advocate General, Haryana.

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**Through Video Conferencing**

**JASGURPREET SINGH PURI, J. (Oral)**

The present petition has been filed under Section 438 of Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No.15 dated 18.01.2021, under Sections 420,406,506,120-B and 34 of IPC, registered at Police Station New Colony, District Gurugram.

As per the FIR a complaint was preferred by 19 complainants stated to be through their SPA Hardesh Ahuja son of Himmat Rai and Sanjay Arora son of Girdhari Lal against the petitioner as well as his wife, son and brother-in-law by alleging that the petitioner runs a shop of inverter and battery under the name and style of Shri Ganesh Enterprises situated at Khandsa Road, Gurugram. All the accused have been luring the complainants for making investment on the pretext of earning them huge profits. The petitioner allegedly told the investors/complainants that he would invest money in real estate and chit funds in which there is a huge profit in short period of time and he has also benefited a lot of people and since the complainants had trusted the accused, they agreed to invest their money. All the accused had been portraying a rosy picture to the complainants but in fact they have cheated the complainants and various other persons to an amount of approximately Rs. 8 crores. Thereafter, in March, 2018, the accused persons stopped meeting the complainants and stopped talking to the complainants and upon asking them to return the money, they kept evading on one pretext or the other and in this way, the accused persons have misappropriated huge amount of money. The details of the same has also been given in the FIR. Thereafter, the complainants gave a complaint to the Superintendent of Police, Gurugram on 29.08.2018 and the accused had rather told the complainants and the police that they would return the money. Thereafter, another complaint was also given to the Superintendent of Police.

Learned counsel for the petitioner has submitted that on the complaint given by the complainants to the police but the police had come to the conclusion vide Annexure P-3 that there was no written document or evidence available and, therefore, it was found that no cognizable offence was committed and it was only a case of some money transaction. Thereafter, the complainants filed a criminal complaint before the learned Judicial Magistrate Ist Class, Gurguram and the learned Judicial Magistrate vide Annexure P-5 came to the conclusion that in the present case investigation must be conducted by the police and, therefore, the application under Section 156(3) of the Code of Criminal Procedure was allowed on 08.01.2021 vide Annexure P-5 and thereafter, the present FIR was lodged on

08.01.2021 under Sections 420, 406, 506, 120-B and 34 IPC. The learned counsel further submitted that the petitioner was never engaged in the business of investment of money or chit fund and the petitioner never embezzled any amount of any of the complainants and rather the matter has now been settled with the complainant and he has also suffered an affidavit in this regard. He has therefore, prayed for grant of anticipatory bail.

On 19.08.2021 this Court had directed the State to file an affidavit with regard to the role of the petitioner in the present case and also the number of complainants who have given the complaints against the petitioner with regard to the embezzlement of money. An affidavit of Assistant Commissioner of Police, Crime-II, Gurugram has been filed through email since the matter is being taken up through video conferencing. A printout of the same is directed to be taken on record.

Learned counsel for the petitioner has submitted that he has received a copy of the affidavit and has perused the same.

Mr. Deepak Manchanda, learned Additional Advocate General, Haryana while referring to the affidavit filed by the Assistant Commissioner of Police submitted that it is a case where the petitioner was involved in lucky draw/chit fund and collected money from large number of people and has embezzled huge amount of money running into crores and, therefore, the petitioner does not deserve the concession of anticipatory bail. He submitted while referring to the affidavit filed by the the Assistant Commissioner of Police that alongwith the affidavit a list has been attached vide Annexure R-1 which shows the amount of money invested by 19 complainants which is to the total amount of approximately Rs.3,10,20,082/-. He submitted that the petitioner has cheated the complainants and other persons to the tune of Rs. 8 crores and another list of some of the persons who are other than the complainants in the FIR is also attached as Annexure R-2 pertaining to 5 persons from whom the accused persons had taken Rs.64,50,000/-. The learned State counsel while referring to para No.4 of the affidavit submitted that one of the accused had also submitted a complaint against the complainant regarding entering her house and harassing her but the complainant had further stated that the accused persons are threatening to kill them. The account statement and account opening form of the petitioner and the two other co-accused and their firms namely, Ganesh Enterprises and R.K. Enterprises Enterprises were obtained from concerned banks and notice under Section 91 Cr.P.C was also given to the other banks as well as the Income Tax Department for obtaining the details of bank accounts. On the perusal it was found that the amount of Rs. 26,50,000/- has been deposited in the account of Yashpal Kapoor (Petitioner) and his firm Ganesh Enterprises from the joint account of Hemraj Thukral and his wife Gyan Thukral and individual account of Gyan Thukral and Mamta Thukral. Apart from this, cash amount of Rs.3,24,00,000/- has also been given by the complainants to the accused persons in installments for the purpose of **committee/lottery and lucky draw**. The said cash has also been found to be deposited in their accounts and money has also been found to be transferred from the accounts of some of the complainants in accounts of accused persons and the accused persons are involved in lucky draw etc. since the year 2007. It has been further stated in the affidavit that notice under Section 41(A) Cr.P.C. was issued to the petitioner and other co-accused for 05.07.2021 and 10.07.2021 and 17.07.2021 and they joined the investigation on 19.07.2021 with their counsel and requested for time on the plea that the present petitioner namely Yashpal is suffering from tension. Another notice was issued to them for 24.07.2021, however, they did not join the investigation. The petitioner Yashpal Kapoor and the other co-accused are deliberately avoiding the joining of investigation and the custodial investigation of the petitioner is required to ascertain the modus operandi as to know the details regarding accounts/registers of committees, lucky draw etc. and an amount of Rs. 3.50 crores is yet to be recovered from the petitioner and, therefore, custodial investigation of the petitioner is required. Furthermore, the petitioner is not in contact with the complainants which shows his motives. Apart from the same, since the petitioner is involved in heinous crime, he is not entitled for concession of bail as there is likelihood that he may misuse the concession of bail by tampering with the evidence and influencing the material witnesses or he may even abscond and flee from justice.

The learned Additional Advocate General has further submitted that it is a case where public at large and huge amount of money is involved and apart from the same, the petitioner has also been threatening the complainants with dire consequences and to kill them and there is high probability that the petitioner, if granted any concession of bail may influence the witnesses or may flee from justice. Rebutting the arguments raised by learned counsel for the petitioner, it has been submitted by the learned Additional Advocate General that the petitioner had been indulging in chit fund and lottery which is evident from the cheque issued by the petitioner vide Annexure P-7 to one Sanjay Arora in which it has been mentioned by the complainant Sanjay Arora that all their accounts of lucky draw till 25.08.2018 have been settled from where it is clear that the petitioner and the other co-accused have been indulging in lucky draw/chit fund system.

The Additional Advocate General has also rebutted the arguments raised by the learned counsel for the petitioner pertaining to the chart prepared by the petitioner vide Annexure P-8 showing that the petitioner was only dealing with the inverter battery and was having his own business and only two persons were having a financial relationship with the petitioner i.e. Hardesh Ahuja and Sanjay Arora and none of the other. The learned Additional Advocate General has referred to the affidavit filed by the State by saying that the chart Annexure P-8 is totally wrong because it has been found during investigation that a number of complainants had given the money to the petitioner and the other co-accused for the purpose of chit fund/lucky draw. He has therefore, opposed the grant of anticipatory bail to the petitioner in view of the peculiar facts and circumstances of the present case.

I have heard the learned counsel for the parties.

In the present case the facts itself suggest that the matter involves high magnitude of money transaction between a large number of people regarding which list has been attached as Annexure R-1 and R-2 with the affidavit filed by the State. The arguments raised by the learned counsel for the petitioner that the matter has been settled with the main complainants namely, Hardesh Ahuja and Sanjay Arora would not carry any weight in view of the fact that various other number of persons who are either complainants in the FIR or otherwise are also involved in the present case who have allegedly given money to the petitioner. Although recovery of money itself cannot become a ground for denial of anticipatory bail but it is a case where it has an adverse social impact and public interest at large is involved and the magnitude of the case is so high that it would dis-entitle the petitioner for the concession of anticipatory bail. Apart from the above, the State has also expressed its apprehension based upon the threats extended by the petitioner to some of the complainants and that he may influence the witnesses and he may even flee from justice. There is no ground for disbelieving such a plea taken by the State.

In view of the above, this Court does not deem it fit and proper to grant the concession of anticipatory bail to the petitioner. Consequently, the same is hereby dismissed.

**25.08.2021** **(JASGURPREET SINGH PURI)**
rakesh **JUDGE**

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