

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

**202**

**CRM-M-34424-2020  
Date of decision: 26.02.2021**

**AMIT ARORA**

.....Petitioner

Versus

**STATE OF PUNJAB AND ANOTHER**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Sandeep Arora, Advocate  
for the petitioner.

Mr. P.S. Walia, Asstt. A.G. Punjab  
for the respondent No.1-State.

Mr. R.S.Bajaj, 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.)

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.100 dated 04.08.2019 registered under Sections 408 read with Section 120-B of the Indian Penal Code, 1860 at Police Station Division No.7, District Jalandhar.

The above said FIR was registered on statement of Sukhjit Singh, owner of Pukhraj Health Care Pvt. Ltd. and Pukhraj Organic, situated at SCF-13, Urban Estate, Jalandhar, who alleged that the petitioner, who was employed as Accounts Manager in abovesaid firms siphoned off amount of Rs. 45,00,000/- by transferring the same in his accounts. Amount of Rs. 7,32, 379/- was transferred by him to the

account of his wife. During enquiry the matter was settled for amount of Rs. 21,78,000/-. The petitioner issued four cheques for the above said amount which were dishonored on presentation to the concerned Bank. The Enquiry Officer recommended registration of FIR against the petitioner and his wife for having committed fraud to the tune of Rs.31,60,541/-.

Apprehending his arrest the petitioner has sought grant of anticipatory bail.

The petition has been opposed by respondent No.1-State in terms of affidavit of Harinder Singh, PPS, Assistant Commissioner of Police (Model Town) Jalandhar.

The petition has also been opposed by learned Counsel for respondent No.2-complainant in terms of reply dated 17.01.2021.

I have heard learned Counsel for the petitioner, learned State Counsel and learned Counsel for respondent No.2-complainant and have gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner was merely an employee of the complainant being the Accounts Manager in the abovesaid firms. The story projected by the complainant is totally unbelievable. The petitioner did not embezzle any amount. The entire case is based on documentary evidence which is already in possession of the complainant. Custodial interrogation of the petitioner is not necessary in the case. The petitioner is ready to join the investigation. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel and learned

Counsel for respondent No.2-complainant have submitted that the petitioner defrauded the complainant of the amount of Rs. 45,00,000/- .The matter was compromised and the petitioner issued cheques for payment of the settled amount of Rs. 21,78,000/- but the cheques were dishonored. Custodial interrogation of the petitioner is required for thorough investigation of the case and recovery of the amount and relevant documents regarding the offences involved. In view of gravity of accusation, the quantum of sentence which the conviction may entail and other relevant factors, the petitioner does not deserve the grant of anticipatory bail and the petition may be dismissed.

The High Court and Court of Session 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 extraordinary 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 also to be taken into consideration.

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).***

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 ***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.”*

Keeping in view the facts and circumstances of the case nature of accusation and evidence against the petitioner prima facie showing involvement of the petitioner in the crime, the fact that custodial interrogation of the petitioner is necessary for thorough investigation of the case, for ascertaining involvement of other persons in commission of the crime, effecting recovery of the money embezzled from the petitioner and also collection of material evidence available in this regard, also quantum of sentence which conviction may entail, consequent apprehension of the petitioner fleeing from justice or tempering with evidence and criminally intimidating the prosecution witnesses but without expressing any opinion on the merits of the case, I am of the considered view that the petitioner does not deserve the grant of anticipatory bail.

In view of the above, the petition for grant of anticipatory bail to the petitioner is hereby dismissed.

**26.02.2021**

Vishal

**(ARUN KUMAR TYAGI)**  
**JUDGE**

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