

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

202-3

CRM-M-39978-2020

Date of decision: 24.02.2021

Sahil

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Diwan S. Adlakha, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana
for respondent No.1-State.

Mr. Premjit Singh Hundal, 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 petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of anticipatory bail in case FIR No.33 dated 05.03.2019 registered under Sections 420, 406 and 120-B of the Indian Penal Code, 1860 at Police Station Sadhaura, District Yamuna Nagar.

While issuing notice of motion on 02.12.2020, this Court had granted interim anticipatory bail to the petitioner with direction to join the investigation and the relevant part of the said order reads as under:-

"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 420, 406 and 120-B of the Indian Penal Code, 1860 at Police Station

Sadhaura, District Yamuna Nagar.

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The petitioner had taken loan from the Axis Bank against mortgage of his gold. The petitioner did not commit any fraud. The authenticity of the gold mortgaged by the petitioner was approved by the jeweller who is on the panel of the bank and the petitioner cannot be fastened with any criminal liability for fraud on the allegations of mortgaging fake gold. The matter involves dispute of civil nature which has been given colour of criminal offence.

Learned Counsel for the petitioner has, on instructions from the petitioner, further submitted that the petitioner undertakes to pay 50% of the loan amount due within one month and balance 50% in easy instalments thereafter. The petitioner is ready to join the investigation and cooperate in the investigation of the case.

Notice of motion.

Pursuant to supply of advance copy, Mr. Ranvir Singh Arya, Addl. A.G., Haryana has appeared and accepted notice on behalf of the respondent-State.

Learned State Counsel has submitted that gold mortgaged by the petitioner was found to be fake. The petitioner did not make payment of any loan installment which shows his involvement in fraud of taking loan by mortgaging fake gold. However, learned State Counsel seeks time to file detailed reply in this regard.

In view of the facts and circumstances of the case, presence of the complainant is also considered to be necessary for just and proper decision of the petition. Therefore, complainant is ordered to be impleaded as respondent No.2. Memo of Parties be amended accordingly.

Case is adjourned to 08.01.2021.

Notice to newly added respondent No.2 be issued for that date and notice be also given dasti, if so desired.

In the meanwhile, the petitioner is directed to join the investigation as and when called upon to do so. In the event of his arrest, the petitioner shall be released on interim bail by the arresting officer/investigating officer on furnishing of bail bonds by him to the satisfaction of the arresting officer/investigating officer. The petitioner shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. and undertaking given by him failing which he shall not be entitled to the protection of interim bail allowed to him."

The petition has been opposed by the learned State

Counsel in terms of reply filed by way of affidavit of Ashish

Chaudhary, HPS, Deputy Superintendent of Police, Bilaspur (Yamuna Nagar) on behalf of the respondent-State.

The petition has also been opposed by respondent No.2-complainant. However, no reply has been filed by respondent No.2-complainant.

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, while reiterating submissions made earlier, submitted that in compliance with order dated 02.12.2020, the petitioner has made 50% of the loan amount and is ready to pay the balance amount in instalments. The petitioner has joined the investigation and he may be granted anticipatory bail as his custodial interrogation is not required in the case.

On the other hand, learned State Counsel and learned Counsel for respondent No.2-complainant have vehemently opposed the petition and submitted that in view of gravity of accusation, the petitioner does not deserve grant of anticipatory bail. Custodial interrogation of the petitioner is necessary for thorough investigation of the case. Therefore, the petition may be dismissed.

In the present case, the petitioner has made 50% of the loan amount and has undertaken to pay the balance amount in instalments to respondent No.2-complainant Bank. The petitioner can be interrogated about the facts and circumstances of the case by joining him in investigation. His custodial interrogation will not be necessary in the case for effecting any recovery of the amount involved.

In view of the facts and circumstances of the case, nature of accusation against the petitioner, the fact that custodial interrogation of the petitioner is not necessary in the case and there is no material to justify the apprehension of the petitioner fleeing from justice or tampering with evidence or 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 deserves the grant of anticipatory bail.

In view of the above, the petition is allowed and order dated 02.12.2020 granting interim bail to the petitioner is made absolute. However, the petitioner shall join the investigation again if and as and when called upon to do so and shall abide by the conditions enumerated in Section 438 (2) of the Cr.P.C. and undertaking given by him, failing which the protection of anticipatory bail order shall not be available to him.

24.02.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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