

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

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CRM-M-43396-2020 (O&M)

Date of decision: 21.01.2021

Sunil @ Sheela

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Rahul Jaswal, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
for the respondent-State.

Mr. Ravinder Malik, Advocate
for the applicant in CRM-30-2021.

ARUN KUMAR TYAGI, J. (ORAL)

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

CRM-30-2021

Prayer in this application is for impleading the applicant as respondent No.2 and for filing reply.

Notice of the application.

Learned Counsel for the petitioner and learned State Counsel accept notice of the application and submit that they have no objection if the application is allowed.

In view of reasons mentioned in the application and no objection, the application is allowed and the applicant is allowed to be impleaded as respondent No.2 and reply on behalf of respondent No.2 is taken on record. Amended memo of parties is also taken on record.

CRM-M-43396-2020

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.722 dated 24.11.2020 registered under Sections 406 and 420 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station Chandni Bagh, District Panipat.

The above said FIR was registered on statement of Manoj. In his statement complainant Manoj alleged that in the year 2012 Neeraj got FIR No.628 dated 30.07.2012 under Section 307 read with Section 34 of the IPC and Section 25 of the Arms Act, 1959 registered in Police Station Chandni Bagh, Panipat against him. In the said complaint Panchayat was convened for compromise in which conversation for recording statement in his favour was held. Sunil @ Sheela (the petitioner) started saying that he had persuaded Neeraj and Madan to compromise for an amount of Rs.52 lakhs. Amount of Rs.20 lakhs was transferred to the account of the petitioner by his brother-in-law Akash Malik. The petitioner had also taken amount of Rs.32 lakhs from his brother-in-law Akash Malik. He came to know that Neeraj and Madan had not taken the amount of Rs.52 lakhs from the petitioner and they had got their statements recorded before the Court on instructions of respectable members of the Panchayat. The petitioner took amount of Rs.52 lakhs from his brother-in-law Akash Malik fraudulently. FIR No.73 dated 29.07.2020 under Sections 120-B, 376D and 384 read with Section 34 of the IPC has also been registered against the petitioner in Police Station Women, Panipat as he had taken amount of Rs.38 lakhs by laying honey trap and then making settlement. The petitioner is duping money from the people by cheating them in the name of settlement.

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

The petition has been opposed by learned State Counsel in terms of reply filed by Satish Kumar, HPS, Deputy Superintendent of Police, Heaq Quarter, Panipat, in the Registry which is taken on record.

The petition has also been opposed by respondent No.2/complainant in terms of his reply.

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

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case registered after a delay of more than seven years. The petitioner was present in the Panchayat and got the matter settled. On the basis of compromise/settlement the complainant was acquitted in the above said case. Now the complainant has falsely implicated the petitioner by concocting story to pressurize him. The complainant's version is also contradictory as in the FIR Akash Malik brother-in-law of complainant Manoj is alleged to have made payment while in the reply it has been mentioned that the amount was transferred by Ajaib Singh uncle of complainant Manoj. The amount of Rs.20 lakhs was transferred to his account but the petitioner had already paid the amount of compromise to Neeraj and Madan and the transfer of the amount was by way of reimbursement to him. The petitioner is ready to join the investigation and his custodial interrogation is not required for effecting any recovery.

In support of his arguments, learned Counsel for the

petitioner has placed reliance on the observations made by Hon'ble Supreme Court in ***Criminal Appeal No.827 of 2020 titled as 'Sumedh Singh Saini Vs. State of Punjab and another'*** decided on 03.12.2020.

On the other hand, learned State Counsel and learned Counsel for respondent No.2 have submitted that on the complaint made by Manoj enquiry was made and Neeraj, Surender Kumar, Sandeep, Ramesh, Angrej Singh and Akash Malik were joined in enquiry who made statements alleging that the petitioner had taken amount of Rs.52 lakhs on the pretext of compromise and embezzled the entire amount. The petitioner is also accused of grabbing Rs.38 lakhs in case FIR No.73 dated 29.07.2020 for compromise. The petitioner has committed serious crimes and his custodial interrogation is required for recovery of the amount as well as thorough investigation of the case. 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 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 ***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 the present case the petitioner is alleged to have taken

amount of Rs.52 lakhs from brother-in-law and uncle of the complainant. The petitioner has also admitted that amount of Rs.20 lakhs out of the amount of Rs.52 lakhs was transferred to his account.

The petitioner has claimed that he had already made payment to Neeraj

and Madan and the transfer was reimbursement of the same. In the course of enquiry the concerned prosecution witnesses made statements implicating the petitioner for having taken amount of Rs.52 lakhs and having embezzled the entire amount. In view of nature of accusation, the mere fact that there is delay in lodging of the FIR does not itself entitle the petitioner for grant of anticipatory bail.

In view of the facts and circumstances of the case, 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 true facts and circumstances of the case, the modus operandi and involvement of other persons, if any, 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, but without commenting on merits, 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.

21.01.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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