

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

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**CRM-M-43385-2020
Date of decision: 11.01.2021**

Deepak @ DC

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

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

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

ARUN KUMAR TYAGI, J. (ORAL)

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

The petitioner has filed the present (first) petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.141 dated 17.09.2020 registered under Sections 380, 411 and 457 of the Indian Penal Code, 1860 at Police Station Jakhal, District Fatehabad.

The above said FIR was registered on statement of complainant Guru Parsad, Manager, State Warehouse, Jakhal who alleged that on 15.09.2020, when he went to inspect the godown, he found that 343 bags containing wheat had been stolen therefrom. He also expressed the suspicion that the wheat had been stolen between dates 01.09.2020 to 15.09.2020.

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

The petition has been contested by the respondent-State in terms of reply filed by way of affidavit of Birem Singh, HPS, Deputy Superintendent of Police, Tohana, District Fatehabad.

I have heard arguments addressed by learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

Learned Counsel for the petitioner has argued that on complaint of Guru Parsad, Manager of State Warehouse, Jakhal FIR was registered regarding theft against unidentified persons. There was undue, unreasonable and unexplained delay of two days in lodging of the FIR. No such offence of theft as alleged was committed by the petitioner. The petitioner has been falsely implicated in the case on the basis of disclosure statements of co-accused Pardeep Kumar and Anmol @ Bona which are not of any evidentiary value against the petitioner. There is no CCTV footage or other direct evidence as to involvement of the petitioner in the crime. The alleged vehicle used for transportation of the stolen bags also did not belong to the petitioner. The petitioner is ready to join and cooperate in the investigation.

On the other hand, learned State Counsel has argued that co-accused Pardeep Kumar and Anmol @ Bona were arrested on 15.10.2020. In their disclosure statements co-accused Pardeep Kumar and Anmol @ Bona have implicated the petitioner besides five other co-accused to be involved in theft of the bags of wheat from the State Warehouse. The petitioner is involved in three other cases of similar nature. Custodial interrogation of the petitioner is necessary for recovery of the stolen property. 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."

Keeping in view the facts and circumstances of the case, the fact that custodial interrogation of the petitioner is necessary for thorough investigation of the case, for discovering the facts regarding modus operandi of committing the crime, involvement of other persons in commission of the crime, collection of material evidence available in this regard and also recovery of the stolen property, 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.

11.01.2021

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**(ARUN KUMAR TYAGI)
JUDGE**

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