

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

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CRM-M-497-2022.

Date of Decision: 10.01.2022.

Shashi Gupta @ Shashi Pal

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Amandeep Singh Manaise, Advocate for petitioner.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Shashi Gupta @ Shashi Pal** in case FIR No.204 dated 22.07.2020 under Sections 120-B, 406 and 420 IPC, registered at Police Station Dinanagar, District Gurdaspur.

Learned counsel for the petitioner *inter alia* contends that version, as alleged in the FIR, is totally concocted one and there is no iota of truth therein. He further submits that allegedly petitioner alongwith co-accused Sonu Gupta (brother of petitioner) being owners of 'M/s International Cattle Feed', Village Jindlehar, Jammu, committed fraud upon complainant-Kamal Kishore, Proprietor of firms namely 'M/s Gupta Trading Company' and 'M/s Gupta Feeds', Dinanagar, District Gurdaspur, by stopping payment of outstanding amount of Rs.31,67,787/- towards supply of raw material by the complainant to their firm 'M/s International Cattle

Feed', Village Jindlehar, Jammu. He further submits that aforesaid allegations are altogether false and frivolous and there is no iota of truth therein. He further urges that as a matter of fact petitioner was working as Bank Manager in Jammu and got voluntary retirement from service in the year 2019 and presently he is residing in Ludhiana, and he came to know about the instant case FIR only when his co-villagers informed him about pasting of notice regarding instant case FIR by the police of Police Station Dinanagar, District Gurdaspur. He further urges that petitioner is neither partner nor working in firm 'M/s International Cattle Feed' and, thus, had no business dealings with the complainant at any point of time. He further urges that above said firm 'M/s International Cattle Feed' was being run by Sonu Gupta and Puran Chand (brothers of petitioner) and the said firm went in losses due to death of Puran Chand on 29.08.2019 and further co-accused Sonu Gupta was also diagnosed with 'Ulcer' and for treatment thereof remained admitted at DMC, Ludhiana. He further submits that though alleged occurrence took place in August, 2019, whereas FIR was got registered on 22.07.2020 and as such there was inordinate delay of about eleven months in registration of FIR and that too unexplained one. He further urges that even otherwise alleged monetary dispute between parties is of civil nature but the same been given colour of criminal offence. He further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

Notice of motion.

At the asking of Court, Mr. Mehardeep Singh, Additional Advocate General, Punjab, accepts notice on behalf of respondent-State. At this juncture, Mr. Gaurav Pratap Singh Pathania, Advocate, has put in appearance on behalf of complainant. Complete copies of paper book have been supplied to them.

Learned State counsel assisted by learned counsel for the complainant while opposing the cause of petitioner has vehemently argued that there were business dealings between complainant and petitioner as well as co-accused Sonu Gupta (brother of petitioner), which dealings went on well till 28.08.2019, however, thereafter firm of accused persons stopped payment to complainant-firm towards supply of raw material to their firm and thereby committed fraud of huge amount of Rs.31,67,787/-. He further urges that recovery of above said amount is yet to be effected from the petitioner and co-accused Sonu Gupta. He further urges that petitioner is habitual offender being involved in another case of similar nature bearing FIR No.233 dated 26.12.2019 under Section 420 IPC, Police Station RS Pura, District Jammu. He further submits that petitioner and co-accused Sonu Gupta could not be arrested and, thus, their appearance was sought through warrants of arrest, but to no avail. He further submits that proclamations were issued to effect appearance of petitioner and co-accused Sonu Gupta, but in vain and as such they were declared 'proclaimed offenders', vide order dated 23.12.2021 by the Court concerned. He further urges that petitioner has not placed on record any document supporting his cause. He further urges that in view of nature of offence committed by the petitioner, his custodial interrogation is required to unveil the truth and as

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly petitioner alongwith co-accused Sonu Gupta in connivance with each other committed fraud upon complainant-Kamal Kishore, Proprietor of firms namely 'M/s Gupta Trading Company' and 'M/s Gupta Feeds', Dinanagar, District Gurdaspur and duped him of Rs.31,67,787/-.

As pointed out by learned State counsel, petitioner has already been declared 'Proclaimed Offender' in the instant case FIR, vide order dated 23.12.2021 by the Court concerned.

The Hon'ble Supreme Court in case '**State of Madhya Pradesh Vs. Pradeep Sharma**', **Criminal Appeal No.2049 of 2013 (Arising out of S.L.P. (Crl.) No.4102 of 2013)** decided on **06.12.2013** has held that if an accused is absconding and declared proclaimed offender in terms of Section 82 Cr.P.C., the said accused should not be granted anticipatory bail.

Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is now well-settled proposition of law that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the Police. The Court has also to see that the investigation is in the province of the Police and an order of

anticipatory bail should not operate as an in-road into the statutory investigational powers of the Police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement to pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner, is dismissed.

(LALIT BATRA)
JUDGE

10.01.2022

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No