

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

**CRM-M No.5360 of 2022
Date of Decision: 17.11.2022**

Sarabjit Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by: Mr. Kushagra Mahajan, Advocate,
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab,
for the respondent-State.

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MEENAKSHI I. MEHTA, J

Apprehending his arrest in the criminal case arisen out of the FIR bearing No.6 dated 17.01.2022 registered at Police Station Dhariwal, District Gurdaspur, under Section 420 IPC, the petitioner has preferred the instant petition for seeking the relief of pre-arrest/anticipatory bail.

2. Bereft of unnecessary details, the allegations, as levelled by informant-Sushil Kumar in the subject FIR, are that the petitioner, who is a transporter, had got the fuel filled in his 25 trucks from his (informant's) Filling Station but he did not pay the price for the same and thus, a sum of Rs.12,04,896/- was due to him from the petitioner on this count and when he asked the petitioner for the payment thereof, he (petitioner) threatened him with dire consequences and later-on, he had issued a cheque in his

(informant's) favour which was dishonoured by the concerned Bank.

3. It is worth-while to mention here that vide the order dated 09.02.2022 passed by the Co-ordinate Bench, the petitioner was extended the relief of interim bail with the direction to join in the investigation. On 15.07.2022, learned State counsel had informed the Court that though the petitioner had joined in the investigation in pursuance of the afore-said order but he did not co-operate in the same. Then, on the request of learned counsel appearing for the petitioner on that day, one more opportunity had been granted to the petitioner to join in the investigation within a period of 10 days positively and to do the needful.

4. On 29.10.2022, learned State counsel, on the instructions from ASI Balbir Singh from the above-said police station, apprised the Court that though the petitioner did join in the investigation on 06.08.2022 but however, he had, again, not co-operated with the Investigating Agency as he had not produced the relevant record of his office pertaining to the transactions in question and he also submitted the Report regarding the role of the petitioner, DDR No.13 dated 30.07.2022, the notice as issued to the petitioner on 27.07.2022 under Section 160 Cr.PC and his (petitioner's) statement as recorded on 06.08.2022 and these documents had been placed on the record.

5. Faced with the afore-discussed situation, learned counsel for the petitioner insisted that he be heard on the merits and accordingly, I have heard him as well as learned State counsel in the present petition and have also perused the file carefully.

6. Learned counsel for the petitioner has contended that the mere version of the Investigating Agency qua the petitioner allegedly having not co-operated in the investigation, does not suffice at all to decline the relief of pre-arrest bail to him (petitioner). He has relied upon the observations made by the Apex Court in **Santosh vs. The State of Maharashtra Criminal Appeal No.1759 of 2017 (Arising out of S.L.P. (Criminal) No. 8439 of 2016) decided on 10.10.2017** in support of this contention. Secondly, he has contended that the dispute between the parties pertains to the monetary transactions and thus, the same is civil in nature and hence, no criminal liability can be fastened upon the petitioner in respect thereof. He has placed reliance upon **Satishchandra Ratanlal Shah vs. State of Gujarat and Another 2019(2) R.C.R. (Criminal) 145** on this point. Thirdly, he has also contended that there is a delay of more than eight years in lodging the FIR and this fact, in itself, does entitle the petitioner to seek the above-said relief and he has referred to the observations made by Delhi High Court in **Anand Raj vs. State of Delhi and Maharashtra 1986(29) DLT 489**. Lastly, he has contended that the offence under Section 420 IPC is punishable with the imprisonment for the period up to 07 years and hence, the petitioner should not be arrested in a routine manner and it being so, he deserves the relief as prayed for in the instant petition. To buttress his contention, he has relied upon the observations as made by Hon'ble the Supreme Court in **Arnesh Kumar vs. State of Bihar & Anr. 2014(3) R.C.R (Criminal) 527** and **Gurbaksh Singh Sibbla etc. Vs. The State of Punjab 1980 AIR (Supreme Court) 1632**.

7. Per-contra, learned State counsel has argued that the petitioner has cheated the informant by getting the fuel filled his vehicles from his (informant's) Filling Station with the intention of not paying the price thereof and keeping in view the gravity of the offence committed by him, this petition be dismissed.

8. As regards the afore-discussed first contention as raised by learned counsel for the petitioner, it is pertinent to mention here that vide order dated 15.07.2022, the petitioner was granted the second opportunity to join in the investigation and to do the needful within 10 days, i.e up to 25.07.2022, positively. However, a perusal of the said Report qua his role, reveals that he had joined in the investigation on 06.08.2022, i.e much after the above-stipulated period and moreover, during this interregnum, a notice under Section 160 Cr.PC had also been issued to him on 27.07.2022 asking him therein to join in the investigation on 28.07.2022 and then, as per DDR No.13 dated 30.07.2022, his house had been found locked. To add to it, he had made a categorical statement on 06.08.2022 that he would produce the record of his office, relating to the transactions in dispute, for the purpose of the investigation but as apprised by learned State counsel, he did not ever report to the investigating agency with the afore-said record thereafter. Thus, it becomes explicit that he has not co-operated in the investigation so as to bring the same to a logical end. The observations, as made by the Apex Court in Santosh (supra), do not help the petitioner at all because in that case, the petitioner had reiterated that he had not purchased the food-grains and therefore, it was held that merely because the appellant did not

confess, it could not be said that he was not co-operating in the investigation whereas in the present case, as discussed earlier, the petitioner did not produce the requisite record in pursuance of his above-said statement. Even otherwise, in the subsequent judgment handed down in **P.Chidambaram vs. Directorate of Enforcement Criminal Appeal No. 1340 of 2019 (Arising out of SLP (Crl.) No.7523 of 2019) decided on 05.09.2019**, Hon'ble the Supreme court, while rejecting the prayer of the petitioner therein for the grant of the relief of pre-arrest bail, has categorically observed that *"the interrogation of accused and answers elicited from him and opinion whether the answers given by him are 'satisfactory' or 'evasive' is purely within domain of the Investigating Agency and the Court cannot substitute its views by conducting mini trial at various stages of the investigation"*.

9. So far as the second contention regarding the dispute between the parties being civil in nature, is concerned, the observations made by the Apex Court in **Satishchandra Ratanlal Shah** (*supra*), to the effect that *"mere inability to return loan amount cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at beginning of transaction"*, are also of no avail to the petitioner because the same had been made while dealing with the appeal as preferred by the appellant therein for assailing the order of the High Court whereby the petition moved by him under Section 482 Cr.PC for seeking the quashing of the order qua framing of the charges by the trial Court against him, had been dismissed but in the instant case, the investigation is still at

the nascent stage and the Challan is yet to be presented in the Court.

10. As regards the third contention qua the delay in lodging the FIR, the verdict rendered by Delhi High Court in Anand Raj (*supra*) does not come to the rescue of the petitioner because the petitioner therein was granted the anticipatory bail for a limited period of three months so as to enable him to seek the bail from the Court of competent jurisdiction who had to ultimately take the cognizance of the offence whereas the facts and circumstances of this case are entirely distinguishable from those of the cited above, as discussed earlier.

11. So far as the last contention raised by learned counsel for the petitioner, is concerned, the observations, as made by Hon'ble the Supreme Court in Arnesh Kumar (*supra*) and Gurbaksh Singh Sibbla etc (*supra*), do not further cause to the petitioner to seek the relief of pre-arrest bail because in Arnesh Kumar (*supra*), it has been observed that “*where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, the arrest be made after some investigation as to the genuineness of the allegation*”. In the present case, a perusal of Annexure P-1, i.e the translated version of the FIR, itself shows that the report qua the enquiry conducted before the registration thereof, has also been included therein and even otherwise, as discussed earlier, the petitioner has not produced the record of his office for the proper investigation in the case. In Gurbaksh Singh Sibbla etc (*supra*), certain guidelines have been laid down for dealing with the plea of anticipatory bail but in view of the above-discussed conduct on the part of

the petitioner during the investigation, the observations, as made in the afore-cited case, would not be of any help to the petitioner in this case.

12. Keeping in view the above-discussed facts and circumstances as well as the nature of the offence as alleged to have been committed by the petitioner, this Court is of the considered opinion that he (petitioner) does not deserve the relief of pre-arrest/anticipatory bail. Resultantly, the petition in hand stands dismissed accordingly.

13. However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the case.

November 17, 2022

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(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>