IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 **CRM-M-8703 of 2021**
Date of decision : 09.08.2022

Vishal

...... Petitioner

VERSUS

State of Punjab

...... Respondent

CRM-M-9151 of 2021

Kirtan Singh

...... Petitioner

VERSUS

The State of Punjab and another

...... Respondents

CORAM : HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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Present :- Mr. D. V. Sharma, Senior Advocate assisted by
Mr. Tushal Sharma, Advocate
for the petitioner in CRM-M-8703 of 2021.

Mr. C. S. Bakhshi, Advocate
for the petitioner in CRM-M-9151 of 2021.

Mr. R. S. Thind, DAG, Punjab.

Mr. Ashwani Prashar, Advocate
for the complainant.

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JASGURPREET SINGH PURI, J. (ORAL)

Both these cases are taken up together for final disposal with the consent of learned counsel for the parties since both the cases arise out of the same FIR pertaining to two different petitioners.

An FIR was lodged by the Gurdaspur Central Cooperative Bank Ltd., Branch Qadian by stating that a preliminary inquiry was conducted in the branch of the bank whereby it has been found that there has been an embezzlement of Rs. 5,16,30,200/- in different accounts of different persons. According to the preliminary report, the present two petitioners and another accused namely, Kirpal Singh were involved in the embezzlement/financial irregularities. In this way, there are three accused in the present case namely Kirtan Singh, Assistant Manager/Branch Manager(Retd.), Pritpal Singh (Accountant) and Vishal (Accountant). In the FIR itself, the details of the entire financial irregularities pertaining to thirteen accounts of the CC limit against property have been mentioned. The details with regard to the accounts and also the amount which was allegedly embezzled pertaining to these 13 accounts have also been mentioned. The total amount involved in the present case is Rs.5,16,30,200/-.

Mr. D. V. Sharma learned Senior counsel appearing on behalf of the petitioner in Criminal Miscellaneous No.8703 of 2021 in Vishal's case submitted that it is a case where the petitioner was working only as a Clerk/Accountant of the bank and he joined the bank for the first time in August 2012 in this Qadian Branch of Gurdaspur Central Cooperative Bank Ltd. and thereafter, he had been working in diligent manner and has been falsely implicated in the present case. He submitted that the preliminary inquiry, if any, was conducted at the back of the petitioner and thereafter, in the month of March 2022, he was dismissed from service. He further submitted that be that as it may, the arrest of the petitioner was stayed by this Court and thereafter, the petitioner has joined the investigation. He further submitted that the petitioner has also cooperated in the investigation process and the record of the bank is already with the police and therefore, the petitioner may be considered for the grant of anticipatory bail.

Mr. C.S.Bakhshi, learned counsel appearing on behalf of Kirtan Singh in Criminal Miscellaneous No.9151 of 2021 submitted that the petitioner-Kirtan Singh was the Branch Manager who was also worked in the branch for long time but he retired in the year 2019. He submitted that so far as the petitioner is concerned, he cannot be said to be involved in the present case since he was only a Branch Manager and the liability, if any, would fall on the accountants, who are the remaining two accused and not the petitioner because he was working in the branch in a supervisory capacity and he was not even aware of embezzlement, if any.

Both the learned counsel for the petitioners also submitted that the subject matter of the alleged embezzlement is from the period of 01.11.2013 to 04.05.2019 and different audits had also taken place but no discrepancies were found in the audits.

On the other hand, learned Deputy Advocate General, Punjab counsel on instructions from Sukhraj Singh Inspector, SHO, Qadian who is present in the Court has submitted that it is a case where the embezzlement pertains to more than Rs.5 crores and the seriousness and magnitude of the present case would disentitle the petitioners for grant of anticipatory bail. He submitted that it is correct that both the petitioners have joined the investigation after their arrest was stayed by this Court but the joining of such an investigation was nothing but an empty shell since the petitioners have not cooperated with the investigation process. He submitted that it is a case where a large number of different persons who were the account holders of the bank have been duped by the petitioners and in the branch of Qadian there were only three employees posted and all the three employees including the present petitioners are accused in the present case. The third accused namely, Pritpal Singh (Accountant) was arrested and he has already been released on regular bail. He submitted that even the bare perusal of the FIR would show that the modus operandi adopted by the petitioners with the other co-accused was that from their loan accounts, lakhs of rupees were withdrawn on the basis of some cheques which were not a part of the cheque books which were issued to those persons and during the course of investigation, the police has also recorded the statements of the affected persons from where it was found that their bank accounts were to be closed by repayment of the loan and the petitioners have rather issued no objection certificates to them but still at the same time, lakhs of rupees were withdrawn on the basis of different cheques which were not a part of the cheque books issued to them. He further submitted that the petitioners have not got recovered those cheque books, the missing loan documents and various other documents which are still in the possession of the petitioners. He further referred to the FIR itself, wherein there are specific roles attributable to both the petitioners wherein these two petitioners along with other co-accused were the only three persons who were deputed in the bank branch and while withdrawing the money, the IDs of these three persons were used and nobody else could have used such an ID. He submitted that mere joining of the investigation would not become a ground for grant of anticipatory bail because the petitioners have not cooperated by non-recovery of those documents which stand missing and in this way, the petitioners have rather hampered the investigation process by non-cooperation.

Learned counsel for the complainant-bank has also opposed the grant of anticipatory bail to the petitioners on the ground that from the period 01.11.2013 to 04.05.2019, an amount of Rs.5 crore has been embezzled from the Gurdaspur Central Cooperative Bank Ltd., Branch Qadian and only three accused including two petitioners were posted in the branch and they were fully responsible for the same. He submitted that they cleverly issued no objection certificates to the account holders after they repaid the loan but from the same account lakhs of rupees were withdrawn and the total affected persons were 48 in number. He has also referred to the reply filed by the bank in which details of the account holders and the amount involved has been referred to as Annexure R-2/3. He further submitted that from the bank, various loan documents and other documents are still missing which are required for the proper investigation of the case.

I have heard learned counsel for the parties.

In pursuance of the interim orders passed by this Court whereby arrest of both the petitioners was stayed, as per learned State counsel, the petitioners have thereafter joined the investigation although at a later stage. However, a serious objection has been raised by the learned State counsel that the joining of investigation of both the petitioners was an empty shell because they have failed to cooperate with the investigation process. Learned State counsel has advanced submissions by stating that various loan documents/ cheque books etc. are already with the petitioners and non-recovery of the same has hampered the investigation process.

On the other hand, learned counsel for the petitioners during the course of arguments have submitted that no document is available with them. Learned counsel for the petitioners also submitted that the petitioner Vishal has already been dismissed from service in the year 2022 and petitioner Kirtan has already retired in the year 2019.

Admittedly, the period of embezzlement is from 01.11.2013 to 04.05.2019. Admittedly both the petitioners were posted in the branch Qadian along with other co-accused Pritpal Singh and only three persons were deputed in the branch for the entire period. The alleged embezzlement which has taken place was quantified by way of a preliminary inquiry although as per the learned counsel for the petitioners they were absent in the inquiry.

However, the learned State counsel has stated that during the course of investigation, it was found that by way of recording of statements of number of account holders which according to the learned counsel for the complainant were 48 in number, they were given no objection certificates by the petitioners and from their account, again lakhs of rupees were withdrawn and in this way, the petitioners with the other co-accused conspired with each other for embezzlement of the amount. This could be done only by using protected IDs.

This Court while considering the prayer for grant of anticipatory bail has to strike a balance between the individual liberty on the one hand and on the other hand it also has to see as to whether the investigation is being hampered or not and as to whether the accused persons cooperated with the investigation process or not. In the present case, the details of the embezzlement amount have not only been given in the FIR itself but the complainant has also attached the list of all those details by which 48 persons were affected by the alleged role of the present petitioners and the total amount went up to Rs.5,54,90,409/-. During the course of arguments, learned State counsel has also pointed that accounts of four more persons were affected and now the figure has risen up to Rs.5,54,90,409/-.

After hearing learned counsel for the parties, this Court is of the considered view that although the petitioners joined the investigation since their arrest was stayed but that itself does not confer any right upon the petitioners for grant of anticipatory bail considering the facts and circumstances and the stand taken by the learned State counsel that they have not cooperated in the investigation process. It is an admitted position that the petitioners were working along with other co-accused during the same period when the alleged embezzlement took place and as per the learned State counsel, the affected persons have produced no objection certificates issued by the petitioners themselves but thereafter, the amount was withdrawn from their accounts which went to the tune of Rs.5,54,90,409/-. Therefore, this Court is of the considered view that considering the seriousness, gravity and magnitude of the offence coupled with the aforesaid reasons, the petitioners do not deserve the concession of anticipatory bail.

In view of the above position, finding no merit in the present petitions and the same are hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

09.08.2022
rimpal

Whether speaking/reasoned	Yes
Whether Reportable :	No