

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

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CRM-M-36469-2022
Date of decision : 11.10.2022

Ramesh Singh

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Lajpat Rai Sharma, Advocate
for the petitioner.

Mr. Gurpreet Singh Sandhu, D.A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

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.62 dated 13.05.2022 registered under Sections 420, 465, 467, 468, 471 and 409 of the Indian Penal Code, 1860 at Police Station Sadar Jalalabad, District Fazilka.

The above-said FIR was registered on an application moved by Inspector Co-operative Societies alleging that a special audit of the funds of the Co-operative Societies was conducted from 01.04.2014 to 31.03.2016 and during audit it was found that the petitioner, who was the Secretary of the Co-operative Societies at that time inducted fake members in the Co-operative Societies and thereafter amounts were advanced in their names, whereas they did not process any residence within the jurisdiction of the Co-operative Societies. It was further found that an amount of Rs.21,00,132.85/- was embezzled by the petitioner.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The petitioner remained Secretary from 2012 to 2016 in the said Society. The amount has been withdrawn by the account holders with non-transferable cheques and the payments has been made by the Bank Manager from counter. The petitioner has nothing to do with the alleged offence. In order to save the skin of other officials, the petitioner has been made a scapegoat. There are also delay of 06 years in lodging of the FIR. The petitioner is already ready and willing to join the investigation.

On the other hand, learned State counsel oppose the present petition in terms of status report filed by way of an affidavit dated 21.09.2022 of Sh. Atul Soni, PPS, Deputy Superintendent of Police, Sub Division, Jalalabad, Fazilka. Learned State counsel submits that an amount of Rs.21,00,132.85/- has been embezzled by the petitioner. The application submitted by the Inspector was got inquired into through D.S.P. (D), Fazilka and after thorough probe the allegations, set forth in the application, were established against the present petitioner. The petitioner is also involved in 02 other cases. Custodial interrogation of the petitioner is required for proper/thorough investigation of the case and also for effecting recovery of embezzled amount.

I have heard learned counsel for the parties and perused the record.

It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in

State Vs. Anil Sharma : (1997) 7 SCC 187 held as under:-

“6. 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 favorable 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.”

Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case, point towards the complicity of the petitioner and thus custodial interrogation of the petitioner is necessary and would not amount to the violation of petitioner's right under Article 21 of the Constitution.

Keeping in view the above facts as well as nature of the offence, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

11.10.2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No