

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-38787-2022
Reserved on: 30.08.2022
Pronounced on: 05.09.2022

Harish Kakkar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Yajur Sharma, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
37	09.12.2021	NRI, District Police Commissionerate, Amritsar	419, 420, 465, 467, 468, 471, 120-B IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 Cr.P.C. seeking anticipatory bail.

2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.

3. The complaint has been reproduced in para 2 of the petition and it reads as follows:

“That the concise facts leading to the registration of the present FIR is that the complainant alleges that he gave a photocopy of the documents of his house to one Lakhwinder Mashih @ Babba and Harish Kakkar (Petitioner) who are property dealers, for the purpose of selling his house. It is further alleged by the complainant that the petitioner and Lakhwinder Masih @ Babba in connivance with each other have prepared forged documents and one Sunder Lal has then executed a sale deed of the said house in favour of Jaswinder Singh and Setal Singh, whereas Sundar Lal is not the owner of the said property. Thus, all the accused persons in connivance with each other have cheated the complainant and the instant FIR was registered.”

4. Ld. Counsel for the petitioner contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an

irreversible injustice to the petitioner and family.

5. Ld. counsel representing the State opposes bail and seeks custodial interrogation.

REASONING:

6. A perusal of the complaint reveals that the complainant had handed over the photocopies of his property documents to the petitioner and his associate. He has named both as the main conspirators in selling the property through impersonation. The sly manner in which the petitioner transferred the property points out the dangerous trend of the revival of thuggee by revisiting the history. Thus, custodial interrogation is required to recover the money and find out the accused's modus operandi.

7. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

8. In Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. 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 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. PadamNarain Aggarwal (2008) 13 SCC 305].

9. In State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187, Hon'ble Supreme Court holds,

[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 favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he 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 task of disinterring offences would not conduct themselves as offenders.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case

for bail at this stage.

11. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

05.09.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.