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

CRM-M-43954-2021
Date of Decision: 07.02.2022

Vikas Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Munish Puri, Advocate,
for the petitioner.

Mr. A.K. Kaundal, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed on behalf of the petitioner under Section 438 of the Cr.P.C., praying for grant of anticipatory bail in case of FIR No.112 dated 19.08.2021, under Sections 420, 417 & 120-B of the IPC, registered at Police Station Division 1, District Pathankot.

As per the FIR, which was lodged on the basis of a complaint made by the Indusind Bank by alleging that the petitioner had got the vehicle TATA LPT No.2518 financed from the Bank and the installments were to be paid in 48 months installments. The petitioner did not become a good borrower and made default in the installments and only few installments were paid, therefore, the present FIR was lodged.

Learned counsel for the petitioner has submitted that the dispute, if any, was *ex facie* civil in nature and for default of payment of loan, such kind of

FIR could not have been lodged and the very purpose of lodging the FIR against the petitioner to pressurize him. He further referred to Annexure P-2, wherein he has rather filed a civil suit in the year 2019 against the Bank seeking mandatory injunction to hand over the possession of the vehicle, which was taken by the Bank forcibly. He also submitted that the suit is still pending and in the year 2021, the present FIR has been lodged just to pressurize the petitioner. He further submitted that in pursuance of the order passed by this Court on 18.10.2021, the petitioner has joined the investigation and has fully cooperated with the investigation process and therefore, has prayed that the aforesaid order be made absolute.

On the other hand, Mr. Kaundal, DAG, Punjab, has stated that it is correct that in pursuance of the order passed by this Court by which the interim bail was granted to the petitioner on 18.10.2021, the petitioner has joined investigation. However, he has submitted that the petitioner has not cooperated with the investigation because he did not produce the vehicle.

I have heard the learned counsel for the parties.

Admittedly, in pursuance of the order passed by this Court on 18.10.2021, the petitioner joined the investigation. The only objection which has been raised by the learned State counsel was that the petitioner has not surrendered the vehicle to the Investigating Agency. However, the stand taken by the learned counsel for the petitioner is that two years before the lodging of the present FIR, the petitioner had rather filed a civil suit for mandatory injunction vide Annexure P-3 seeking direction to the Bank for handing over the possession of the vehicle, which they had taken forcibly as there were default in the EMI installments and that the civil suit is still pending and it is yet to be ascertained as to whether the vehicle was actually taken by the Bank forcibly or not and whether

the same is in the custody of the petitioner or not. Learned counsel for the petitioner has also submitted that the vehicle was forcibly taken by the Bank and thereafter, when he had filed a civil suit, the Bank has got this FIR registered against the petitioner and now when an objection is taken by the State that the petitioner has not cooperated with the investigation process as the vehicle has not been recovered, the same cannot become a ground for denial of anticipatory bail to the petitioner. The argument raised by learned counsel for the petitioner does carry weight. The FIR pertains to default in payment of EMI installments and *prima facie* it appears to be a civil dispute between the parties. It is yet to be ascertained in the suit for mandatory injunction filed by the petitioner as to whether the vehicle is in the custody of the petitioner or with the Bank and therefore, this Court is of the opinion that the objection taken by the State that the vehicle has not been produced by the petitioner, cannot become a ground for denial of bail to the petitioner.

In view of the aforesaid positions, this Court deems it fit and proper to grant the concession of anticipatory bail to the petitioner. Consequently, the present petition is allowed. The order dated 18.10.2021 is hereby made absolute. The petitioner shall continue to join the investigation as and when required by the Investigating Officer and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

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

07.02.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |