

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

207

CRM-M-41472-2022

Date of decision : 21.11.2022

Raj Kamal @ Kamal Joshi

Petitioner

V/S

State of Punjab and another

Respondents

**CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Nirmaljeet Singh Sidhu, Advocate  
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab  
for respondent No.1-State.

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**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.164 dated 17.07.2022 registered under Section 420 of the Indian Penal Code, 1860 at Police Station City South, District Moga.

The above-said FIR was registered on a complaint made by complainant-Manohar Lal alleging that he is having a shop in Suniara Bazar. He has 02 acres of land in Village Kokri Kalan. The petitioner, who is working in Aastha Enterprises, Harnoor Poly House, Near Bus Stand, Moga visited his shop on 08.02.2022 and asked him to raise Poly house on his land. He allured him and demanded Rs.12,00,000/- for raising Poly House on his land. The complainant paid him Rs.2,00,000/- cash and promise to pay remaining amount after raising Poly house on his land. The petitioner also gave him receipt of Rs.2,00,000/- received by him. Thereafter, when the complainant

enquired from Horticulture Department, he came to know that neither any company is registered with them under the name of 'Harnoor Poly House' nor the petitioner did any work regarding this. When he demanded his money back from the petitioner, he refused to do so and abused him.

Learned counsel for petitioner submits that the petitioner has been falsely implicated in the present case. The firm of the petitioner is duly registered. He has been further authorized to do business of Poly House/Net House project on behalf of Innovative Green House Project (LLP). The matter is purely of a civil nature which has been given a criminal colour by the complainant. The petitioner is still ready to install the Poly House on the land of the complainant but the complainant did not perform his part of the agreement by not paying the agreed amount as mentioned in the application form filled by the complainant with the petitioner firm. Nothing is to be recovered from the petitioner and his custodial interrogations is not required. The petitioner is ready and willing to join the investigation.

On the other hand learned State counsel opposes the present petition in terms of status report dated 08.10.2022 filed by the State which is already taken on record. Learned State counsel submits that the petitioner cheated the complainant to the tune of Rs.2,00,000/- for raising Poly House on the land of the complainant. During investigation, the police found that the petitioner was not registered with Horticulture Department and he was not authorized to install Poly House. The petitioner is a habitual offender and he is also involved in

05 other cases of similar nature. The custodial interrogation of the petitioner is required for thorough investigation of the case and for recovery of amount of Rs.2,00,000/-.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. Moreover, his antecedents are also not good as he is already involved in 05 other cases of similar nature. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P, (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

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. This view of mine finds support from the judgment of Hon'ble Supreme Court in ***Madhya Pradesh Vs. Pradeep Sharma, (2014) 2 SCC 171***.

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.

21.11.2022

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(ASHOK KUMAR VERMA)  
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No