

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

CRM-M-44719-2022

Date of Decision: 27.9.2022

Sandeep Kumar

... Petitioner

Versus

State of Haryana

... Respondents

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

Present: Mr.M.S.Chahal, Advocate for the petitioner

Mr.Himmat Singh, DAG, Haryana

...

The petitioner has approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail to him in FIR No.630 dated 25.5.2022 under Sections 419, 420 of the IPC registered at Police Station Sadar Hisar, District Hisar.

Learned counsel for the petitioner, *inter alia*, contends that the petitioner is not named in the FIR. He is being sought to be implicated on the basis of disclosure statement of co-accused. Co-accused Gaurav and Navdeep have already been granted regular bail by the trial court. Moreover, the petitioner has not been assigned any role in commission of alleged offence. Learned counsel further submits that nothing is to be recovered from the petitioner and thus no custodial interrogation is required.

On the contrary, learned counsel for the State submits that the allegations against the petitioner are serious in nature. Biometric data of co-accused Navdeep and Gaurav did not match during physical examination test because some other persons had appeared in the written examination on behalf of co-accused Navdeep and Gaurav

by impersonating them. As per their disclosure statement, it was revealed that it is the petitioner who had taken a sum of Rs.3.5 lakhs from each of them for clearance of the written examination. He prays for dismissal of the anticipatory bail petition.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are very serious in nature that in the recruitment process initiated by recruitment board CRPF, the petitioner is alleged to have taken a sum of Rs.3.5 lakhs each from both the aforesaid co-accused and had made some other person sit in the written examination on their behalf. These facts came to be unearthed when biometric data of co-accused Gaurav and Navdeep did not match during physical examination. Prima facie, the allegations are very serious in nature. Investigation is still going on and, therefore, custodial interrogation of the petitioner is necessary for finding out the modus operandi of commission of offence.

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.

In view of seriousness of allegations and gravity of offence, I find that this is not a fit case for grant of anticipatory bail to the petitioner. The petition is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

27.9.2022
MFK

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No