

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

CRM-M-46984-2022

Date of Decision: 17.10.2022

Dinesh Kumar

...Petitioner

Versus

State of Punjab

...Respondents

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

Present: Mr. Manuj Nagrath, Advocate for the petitioner

Mr.GS Sandhu, DAG, Punjab

Mr.Vaibhav Sehgal, Advocate for complainant

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Mr Vaibhav Sehgal, Advocate appears on behalf of the complainant and files *Vakalatnama* which is taken on record.

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.175 dated 14.8.2022 under Sections 406, 408, 420, 120-B of the IPC registered at Police Station Sarabha Nagar, District Ludhiana.

Learned counsel for the petitioner contends that present case has been lodged falsely against the petitioner. The petitioner has nothing to do with the offence. Even as per the allegation, the present dispute relates to non-payment of dues by a Company of which the petitioner is neither a Director nor authorized representative. The petitioner was employed as an Accountant and has no role in the management of the Company. Furthermore, the matter was settled by way of compromise on 3.11.2020 which was also between the complainant and co-accused Gaurav Aggarwal. The present dispute pertains to breach of promise of compromise being a civil dispute. A civil dispute is tried to be given the

colour of criminal wrong doing. Nothing is to be recovered from the petitioner and thus no custodial interrogation is required.

On the contrary, learned counsel for the State assisted by the learned counsel for the complainant submits that the petitioner alongwith the other co-accused has committed a serious offence. The company has found that Gaurav Aggarwal alongwith the petitioner and other accused persons have misappropriated Rs.70,00,000/- more. On checking of the accounts of the petitioner, it has been found that he has received Rs.10,60,000/- and Rs.11,11,834 from Gaurav Aggarwal, and the petitioner could not explain as to how he received the said money in his account. The petitioner alongwith other co-accused hatched conspiracy each other and obtained Rs.80,00,000/- from cable operators and misappropriated the same. Learned counsel also submits that the investigation is at initial stage and recovery is yet to be effected from the accused persons and as such petitioner's custodial interrogation is necessary.

Having heard learned counsel for the parties, I am of the view that there are specific allegation against the petitioner that the complainant company has found that Gaurav Aggarwal alongwith the petitioner and other accused persons in collusion with each other have misappropriated Rs.70,00,000/- more. On checking the accounts of the petitioner, it has been found that he has received Rs.10,60,000/- and Rs.11,11,834/- from Gaurav Aggarwal and the petitioner could not explain as to how he received the said amount in his account. There is further allegation that the petitioner alongwith other accused persons hatched conspiracy each other and obtained Rs.80,00,000/- from cable

operators and misappropriated the same. Moreover, investigation is still going on and, therefore, custodial interrogation of the petitioner is necessary for finding out the modus operandi of commission of offence and for recovery of the hefty amount. 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 the discussion made above, the present petition being devoid of any merit is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

17.10.2022
MFK

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>