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

CRM-M-52476-2021

Date of Decision: 01.08.2022

Sudesh Bala

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. A.S. Kakkar, Advocate,
for the petitioner.

Mr. Naveen S. Panwar, DAG, Haryana.

Mr. G.S. Sidhu, Advocate,
for the complainant.

JASGURPREET SINGH PURI, J. (ORAL)

This is the second petition filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case bearing FIR No.172 dated 16.07.2018, under Sections 420, 120-B & 34 of the IPC, registered at Police Station Ellenabad, District Sirsa.

It has been submitted by learned counsel for the petitioner that this is the second successive bail petition filed by the petitioner. He further submitted that earlier the petitioner had filed a petition along with her husband for grant of anticipatory bail in CRM-M-33694-2018 and vide orders dated 27.09.2018 (Annexure P-8), the bail was granted to the husband of the petitioner but the same was denied to the petitioner and it has been almost 4 years and thereafter, the other co-accused have also been granted bail. He

referred to another order passed by this Court vide Annexure P-9 where the other co-accused were granted anticipatory bail. He also submitted that as per the allegations contained in the FIR, the petitioner along with other co-accused had taken an amount of Rs.11 lacs from the complainant on the pretext of sending the son of the complainant abroad and thereafter, neither the son of the complainant was sent abroad nor the money was returned back and in this way as per the allegations, the petitioner has cheated the complainant. He also submitted that so far as the filing of the second successive bail petition is concerned, the same would be maintainable in view of the fact that it has been almost 4 years and the matter is still being investigated by the Police and there is change of circumstances in view of the fact that the other co-accused have been granted bail by this Court. He further submitted that the petitioner is a lady aged 42 years and this Court vide order dated 13.01.2022, had stayed the arrest of the petitioner and thereafter, the petitioner has already joined investigation and has fully cooperated with the investigation process and therefore, the successive bail petition would be maintainable and the mere fact that the earlier bail application was dismissed 4 years ago, would not be a bar for the entertainment of the present bail petition in view of the peculiar facts and circumstances. He further submitted that since the petitioner has joined the investigation and non-recovery of money cannot become a ground for denial of bail to the petitioner and therefore, has prayed that the petitioner may be granted anticipatory bail.

On the other hand, Mr. Naveen S. Panwar, learned Deputy Advocate General, Haryana, has stated that it is correct that in pursuance of the orders passed by this Court on 13.01.2022, the petitioner has already joined

investigation. However, he has opposed the grant of anticipatory bail to the petitioner only on the ground that the amount of Rs.11 lacs is yet to be recovered from the petitioner which she allegedly taken from the complainant for sending the son of the complainant abroad.

Mr. G.S. Sidhu, Advocate has caused appearance on behalf of the complainant and has opposed the grant of anticipatory bail to the petitioner again on the ground that the amount has not been recovered from the petitioner and therefore, she does not deserve the concession of anticipatory bail.

I have heard the learned counsel for the parties.

This is the second successive bail petition filed by the petitioner for grant of anticipatory bail. The earlier bail petition filed by the petitioner along with her husband vide Annexure P-8 where bail was granted to the husband of the petitioner but the same was denied to the petitioner. Thereafter, the other co-accused have been granted bail by this Court and apart from the same, this Court had directed that the arrest of the petitioner shall remain stayed and consequently, as per the learned State counsel, the petitioner has already joined the investigation, therefore, this Court is of the view that the second successive bail petition filed by the petitioner would be maintainable in view of the change of circumstances and therefore, the mere fact that 4 years ago the petitioner, who is a lady and whose anticipatory bail was dismissed, will not be an embargo for filing the successive bail petition.

Admittedly, the petitioner, who is a lady, has joined investigation. The FIR is of the year 2018 and the matter pertains to Sections 420, 120-B & 34 of the IPC, which is triable by the Magistrate. The only ground of objection taken by the learned State counsel and that of the learned counsel for the

complainant was that recovery of amount is yet to be effected from the petitioner. This Court is of the view that it is a settled law that the police cannot become a recovery agent and it is yet to be ascertained as to whether any amount was due from the petitioner or not. The present petition is only for the grant of anticipatory bail and on this score alone, the petitioner cannot be denied for grant of anticipatory bail. Moreover, she has already joined the investigation as per the learned State counsel.

In view of the aforesaid position, the present petition is allowed. However, it is directed that the the petitioner shall continue to join the investigation and cooperate with the investigation process as and when called upon to do so by the I.O. and shall also 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 only meant for the purpose of decision of present petition.

01.08.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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