IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50607 of 2022
Reserved on: -17.11.2022
Date of pronouncement: - 21.11.2022

Vijay Pal Singh

......Petitioner

Versus

State of U.T., Chandigarh

......Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -

Mr. Nikhil Anand, Advocate,
for the petitioner.

Mr. A.M. Punchhi, Public Prosecutor with
Mr. Anupam Bansal, Addl. Public Prosecutor,
for U.T., Chandigarh.

NAMIT KUMAR, J.

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.100 dated 10.12.2021 under Sections 406, 420 IPC and Section 120-B IPC (added later on) registered at Police Station Sector 49, Chandigarh.

The case of the prosecution is that the FIR has been lodged on the complaint of Vishal Sagar son of Late Sh. Bimal Kumar Sharma and other persons stating that Manjit Kaur (mother of the petitioner) introduced herself as President of the Residents Welfare Association, Sector 51-A, Chandigarh, and as a member of Special Committee constituted by Hon'ble Administrator for House Allotment and deputed as Special Officer to Chandigarh by PMO, New Delhi. Manjit Kaur allured the complainants that she will get allotted Chandigarh Housing Board Flats No.313, 277, 266, 303 and commercial booths to all the complainants in Sector 51, Chandigarh, and Flat No.5470, Sector 38 West, Chandigarh. Manjit Kaur received a total sum of Rs.4,40,73,000/- from them in connivance with her son Vijay Pal (petitioner), Mrs. Malika wife of the petitioner and Driver Vikram Singh. Complainants had paid the said amount from their bank accounts/NEFT/Cheques on different dates to the Bank account of accused Manjit Kaur and also cash to co-accused. Thereafter complainants realised that they were cheated by accused Manjit Kaur. Manjit Kaur failed to fulfill the promise. Complainants requested Manjit Kaur to return their outstanding amount. Manjit Kaur returned only Rs.15,00,000/- and has not paid the remaining amount to complainants and has cheated them to the tune of Rs.4,40,73,000/-. During investigation, it has emerged that Manjit Kaur is not member of any Core Committee of Chandigarh Housing Board. In addition to present FIR, nine other FIRs are lying lodged against Manjit Kaur. Said Manjit Kaur is mother of the petitioner and entire amount was kept by Mrs. Pradeep Baidwan @ Malika wife of petitioner Vijay Pal Singh. She also maintained a diary in which entries of entire amount transferred by the complainants to bank account of accused Manit Kaur. Diary stands recovered from wife Pardeep Baidwan @ Malika.

Petitioner Vijay Pal Singh has been found to have withdrawn amount of Rs.31,00,000/- from account of her mother. Thus petitioner was aware of impugned cheating. Crores of rupees also found deposited in the joint account of petitioner Vijay Pal Singh and his wife Pardeep Baidwan @ Malika, son. Petitioner Vijay Pal Singh is found to be beneficiary of this joint account and withdrawn huge amount of Rs.31 lakhs from the account of his mother. Complainants have recorded statement that accused Pardeep @ Malika, Vijay Pal Singh and Vikram Singh also allured them for allotment of Chandigarh Housing Board flats leading to nomination of petitioner-Vijay Pal Singh in this case.

Mr. A.M. Punchhi, Public Prosecutor, U.T., Chandigarh, who appears on advance notice, has filed reply by way of an affidavit of Niyati Mittal, DANIPS, Deputy Superintendent of Police, Economic Offences Wing, U.T., Chandigarh, wherein it has been stated as under:

> ***"1. That investigation in the present case has revealed that a total amount of Rs.4,40,73,000/- has been received in the account of accused Manjit Kaur from the complainants. Out of this amount Rs.68,35,000/- withdrawn from the account of Manjit Kaur has been deposited in the joint account of petitioner Vijay Pal Singh and his wife Pardeep @ Malika Baidwan.***
>
> ***2. That investigation has further revealed that the following amount have been withdrawn from the account of accused Manjit Kaur and from the joint account of petitioner and his wife.***
>
> ***(i) Amount i.e. Rs.12 lakhs withdrawn by accused Mrs. Pardeep @ Malika Baidwan from the account of Manjit Kaur.***

(ii) Amount i.e. Rs.47 lakhs withdrawn by Vijay Pal Singh from the account of Manjit Kaur.

(iii) Total amount i.e. Rs.63,85,000/- withdrawn by accused driver Vikram Singh from the account of Manjit Kaur.

(iv) Total amount i.e. Rs.21,50,000/- withdrawn by accused driver VIkram Singh from joint account of Vijay Pal Singh and Mrs. Pardeep @ Malika Baidwan.

(v) Remaining amount i.e. Rs.3,13,38,000/- is issued by accused Manjit Kaur and her family.

3. At present there is a balance of only Rs.77.29/- in the account of accused Manjit Kaur and an amount of Rs.4,05,679.54/- in the joint account of petitioner and his wife. Therefore, all the family members have utilized and misappropriated the entire money received from the complainants.

4. The petitioner does not deserve any sympathetic consideration on account of his medical condition. He has no physical disability and the extent of his mental disability, which is a psychiatric issue is disputed and debatable. The fact that the petitioner is in fit state of mind is evident from the fact that he himself has withdrawn an amount of Rs.47 lacs from the account of his mother Manjit Kaur, as revealed from bank statement obtained during investigation. The petitioner is also a beneficiary from the ill-gotten money, which was hard earned money of complainants.

5. That apart from the fraudulent money received by accused Manjit Kaur and her family, the husband of Manjit Kaur was getting amount Rs.43,849/- as

> ***monthly pension, which was the only legal income of the family."***

Learned counsel for the petitioner has argued that the petitioner is innocent person and has been falsely implicated in the case. He further submitted that the petitioner has been co-operating with the investigating agency and apprehending his arrest, he approached the Court of learned Additional Sessions Judge, Chandigarh, for grant of pre-arrest bail, which has wrongly been rejected vide order dated 27.10.2022 (Annexure P-7). He further submitted that there is violation of Section 41-A Cr.P.C. as no notice has been served upon the petitioner and there is no requirement to arrest the petitioner in the present case keeping in view the judgment of the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar and another****, 2014(8) SCC 273*. He further submitted that the petitioner is suffering from "Chronic Schizophrenia" and has been assessed as 65% disabled by the PGIMER, Chandigarh, and therefore, is entitled to be released on anticipatory bail in the present case in terms of Section 330 Cr.P.C. Learned counsel further placed reliance on order dated 14.09.2021 passed by a Co-ordinate Bench in CRM-M-38080 of 2021 (Vijay Pal Singh v. State of UT, Chandigarh) whereby the petitioner was granted interim bail in another FIR registered against the petitioner and his mother pending for 03.02.2023.

Per contra, learned Public Prosecutor has argued that total amount of Rs.4,40,73,000/- has been received in the account of accused-Manjit Kaur from the complainants and out of this, amount of Rs.68,35,000/- withdrawn from the account of Manjit Kaur has been deposited in the joint account of petitioner-Vijay Pal Singh and his wife Pardeep @ Malika Baidwan and huge amount has been withdrawn by the petitioner from the account of co-accused-Manjit Kaur (mother of the petitioner) as has been detailed in para 2 of the affidavit. He further submitted that all the family members have utilized and misappropriated the entire money received from the complainants. He further argued that the petitioner does not deserve any sympathetic consideration on account of his medical condition as he has no physical disability and so far as his mental disability is concerned, the same is psychiatric issue, which is disputed and debatable and he is in fit state of mind as he himself has withdrawn an amount of Rs.47 lakhs from the account of his mother. It has further been stated that the family income was only Rs.43,849/- on account of monthly pension and that was only legal income of the family. Learned Public Prosecutor placed reliance on the judgment of the Hon'ble Supreme Court in ***Sumitha Pradeep v. Arun Kumar C.K. and another, 2022 LiveLaw (SC) 870***.

Having heard learned counsel for the parties and on perusal of the record, it has emerged that the petitioner and his whole family is involved in nine other cases on account of similar allegations. The details of the said FIRs is as under: -

*"<u>**Investigation by EOW**</u>*

1. *FIR No.34 dated 12.05.2021 u/s 406, 420 IPC, Police Station Sector 49, Chandigarh – Rs.88 lakhs.*
2. *FIR No.99 dated 10.12.2021 u/s 406, 420 IPC, Police Station Sector 49, Chandigarh – Rs.42.20 lakhs.*
3. *FIR No.103 dated 13.12.2021 u/s 406, 420 IPC, Police Station Sector 49, Chandigarh – Rs.83 lakhs.*

4. FIR No.106 dated 16.12.2021 u/s 406, 420, 120-B IPC, Police Station Sector 49, Chandigarh – Rs.97.22 lakhs.

Investigation by PS-49

5. FIR No.13/2021 u/s 406, 420 IPC, PS-Sector 49 Chandigarh

6. FIR No.64/2021 u/s 406, 420 IPC, PS-Sector 49 Chandigarh

7. FIR No.67/2021 u/s 406, 420 IPC, PS-Sector 49 Chandigarh

8. FIR No.89/2021 u/s 406, 420 IPC, PS-Sector 49 Chandigarh

9. FIR No.11/2021 u/s 406, 420 IPC, PS-Sector 49 Chandigarh"

In the reply filed before the learned Sessions Court in the anticipatory bail application of the petitioner, it has further been averred that the whole family has defrauded various persons to the tune of crores of rupees and the relevant portion from the reply is as under: -

*"**Investigation***

During the course of investigation, it is found that accused Manjit Kaur has allured the complainants to get allotted the flats/duplex flats, commercial sites etc. as impersonating herself as president of Resident Welfare Association of Sector 51, member of allotment committee of Governor quota (discretionary quota) with connivance of Vijay Pal Singh (son), Mrs. Malika (daughter-in-law) and driver VIkram Singh. Further, account statement/bank record of all the complainants and accused Manjit Kaur and driver Vikram Singh obtained from different banks. From the scrutinized it is found that amount deposited/transferred from the complainant in the account of accused Manjit Kaur is found as stated in the complaint. Further, it is found that accused Vikram Singh withdrawal the amount from the account of Manjit Kaur totaling *to Rs.63,50,000/- and from the account of Sh. Vijay Pal Singh, son of Manjit Kaur amount approximately Rs.25 lakhs and further handed over to Malika Baidwan, daughter-in-law of Manjit Kaur.*

During the course of investigation, accused Manjit Kaur, wife of Sher Singh, Resident of Flat No.281, Sector 51-A, Chandigarh has been arrested in the present case on 22.04.2022 and is still in Model Jail, Burail, Chandigarh.

TOTAL PAYMENT TRANSFER FOR CHANDIGARH HOUSING BOARD FLATS SECTOR 51A AND OTHER PROPERTIES FOLLOWS:

For Flat No.313, HIG, Sector 51A, Chandigarh by Shruti Sagar – Rs.6539000.

For Duplex No.5470, Sector 38 West, Chandigarh by Vishal Sagar – Rs.6430000.

For Flat No.303, Sector 51A, Chandigarh by Amit and Ruchika – Rs.5889000.

For Flat No.266 HIG, Sector 51A, Chandigarh by VIkram and Sangeeta – Rs.6507000.

For Flat No.270, HIG, Sector 51A, Chandigarh by Ajay and Sarwan Kumar – Rs.5889000.

For commercial sites, Sector 43, Chandigarh adjoin Hotel Gaur by Vishal and others – Rs.12819000.

Total amount – Rs.4,40,73,000/-

For commercial Site, Sector 43 adjoin to Hotel Gaur (invested by Vishal Sagar, VIkram Kharbanda, Ajay Sahni and Amit Tuteja) – Rs.5580000

By Yes Bank Dolphin Global (Vishal Sagar) – Rs.2139000

By Indusind Bank Dolphin Legal (Vishal Sagar) – Rs.2000000

By Cash, 19.1.2019 by Vishal and VIkram – Rs.2000000

By Cash 24.03.2019 by Ajay and Amit – Rs.2000000

By Cash 02.06.2019 by Vishal, Amit, Ajay and VIkram – Rs.1100000

Total Paid for commercial sites – Rs.12819000/-

During the investigation the above said flats are verified from Chandigarh Housing Board, Sector 9, Chandigarh and it is found that all the said flats had already allotted to some other persons. Further, as per report Mrs. Manjit Kaur is not member of any core committee of Chandigarh Housing Board, Sector-, Chandigarh.

During the investigation, it is found that except the said case FIRs, the following FIRs have also been registered against accused Manjit Kaur in UT, Chandigarh.

The present case is being investigated by the Economic Offences Wing. A Co-ordinate Bench of this Court in CRM-M-42987 of 2021 – Palwinder Singh v. State of Punjab – decided on 12.10.2021, in a case relating to economic offence and after considering the law laid down by the Hon'ble Supreme Court in ***State of Gujarat Versus Mohanlal Jitamalji Porwal and others*** *(1987) 2 SCC 364* as well as in ***Y.S. Jagan Mohan Reddy Vs. CBI,*** *(2013) 7 SCC 439* dismissed the bail application of the accused. The relevant portion of the said order is reproduced hereinbelow:-

> *"The present case relates to economic offence.*
>
> *The Supreme Court in* ***State of Gujarat Versus Mohanlal Jitamalji Porwal and others (1987) 2 SCC 364****, the Supreme Court held as under:-*
>
> > *"5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at*

> *the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”*

In ***Y.S. Jagan Mohan Reddy Versus CBI (2013) 7 SCC 439****, the Supreme Court held as under:-*

> *“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deeprooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
>
> *35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”*

The contention of the learned counsel for the petitioner that in the FIR there are no specific allegation of petitioner impersonating is of no avail at this stage. Suffice-to-say that FIR is only an information given for initiation of criminal proceedings and is not supposed to be an encyclopedia of facts. A detailed inquiry was held by SSP in the present case. To have a deeper probe and to unearth the modus-operandi, custodial interrogation of the

> *petitioner is required. The fact that there was recovery of Rs.7,72,870/- does not dilute the allegations of embezzlement. A bald statement has been made that the petitioner was a clerk and not a Branch Manager but nothing has been produced with the petition to substantiate the statement made.*
>
> *Considering the facts and circumstances of the case in totality, gravity of allegations and the fact that public money is involved, no case is made out for grant of anticipatory bail.*
>
> *Dismissed."*

The Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others, (2011) Supreme Court Cases 694*** laid down the factors and parameters which can be taken into consideration while dealing with the anticipatory bail. The relevant portion of the aforesaid judgment is reproduced as under:-

> *"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*
>
> > *i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
> >
> > *ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
> >
> > *iii. The possibility of the applicant to flee from justice;*
> >
> > *iv. The possibility of the accused's likelihood to repeat similar or the other offences.*

> *v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
>
> *vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
>
> *vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
>
> *viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
>
> *ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
>
> *x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.*

113. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the *accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.*

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the court of Sessions or the High Court is always available.

Irrational and Indiscriminate arrest are gross violation of human rights.

115. In Joginder Kumar's case (supra), a three Judge Bench of this Court has referred to the 3rd report of the National Police Commission, in which it is mentioned that the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case."

x x x x x

26. The law with regard to the grant of anticipatory bail in case Siddharam Satlingappa Mhetre (supra) which has been referred to by counsel for both the parties is concerned, the same is clear from the perusal of para 112 of the aforesaid judgment reproduced above. The parameters as enunciated by Hon'ble the Supreme Court including the gravity of the accusations and exact role of the accused etc. are concerned, it has been observed that while considering the prayer for the grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused and the Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and that the arrest should be last option and should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case."

So far as contention of the learned counsel for the petitioner with regard to Section 41-A Cr.P.C. and the law laid down by the Hon'ble Supreme Court in ***Arnesh Kumar's*** case (supra) is concerned, by a Co-ordinate Bench of this Court in ***Varun Singh v. State of Haryana****, 2021(3) Law Herals 2723,* it has been held while considering the judgment in ***Arnesh Kumar's*** case (supra) that it is satisfaction about necessity of arrest which is important and which has to be complied with. Para 11 of the said judgment reads as under: -

> *"As per the FIR as well as the investigation conducted by the police a very grave and serious role has been attributed to the petitioner. As per the allegations, the complainant victim was of the age of 14 years in the year 2019 when the petitioner had allured her on the pretext of marriage and thereafter, when the girl was of the age of 16 years, the present FIR came to be lodged. The argument raised by the learned counsel for the petitioner that the relationship was the result of consent between the petitioner and the minor girl would not carry any weight in view of the fact that consent of a minor is immaterial and insignificant. Another argument raised by the learned counsel for the petitioner that the FIR came to be lodged on the basis of pressure by the parents of the girl also does not inspire confidence at this stage in view of the fact that the statement of the minor girl victim was recorded under Section 164 Cr.P.C. before the Judicial Magistrate First Class, Ambala, wherein as per the prosecution, she reiterated the allegations levelled in the FIR. Learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court in Arnesh Kumar (supra) to contend that there should not be automatic arrest where the punishment prescribed is less than 7 years. The Hon'ble Supreme Court in the aforesaid judgment had issued various directions and all the State Governments were directed to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down flowing from Section 41 Cr.P.C. Police officers were also directed to furnish the reasons and material which*

> *necessitated the arrest while forwarding/producing the accused before the Magistrate for further detention. The directions were not only limited to Section 498-A IPC but were also made applicable to cases where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years.* ***Therefore, the argument raised by the learned counsel for the petitioner that the police should not make arrest when the maximum punishment provided is less than seven years, is fallacious. As per the judgment of the Hon'ble Supreme Court, it is the satisfaction about the necessity of arrest which is important and which has to be complied with.*** *Furthermore, in* **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others, (2011) Supreme Court Cases 694***, Hon'ble the Supreme Court laid down the factors and parameters which can be taken into consideration while dealing with the anticipatory bail. The first parameter laid down was that the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made. Various other parameters were laid down which could be considered for deciding the petitions for the grant of anticipatory bail and it was held that Courts must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and whether these allegations are corroborated by other material and circumstances on record."*

Keeping in view the above facts and circumstances, moreso, the allegations leveled against the petitioner, coupled with the fact of seriousness of offences as well as settled proposition of law, the present petition has no merit and, thus, deserves to be dismissed.

Accordingly, the present petition is dismissed.

However, nothing stated hereinabove shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(NAMIT KUMAR)
JUDGE

21.11.2022
R.S.

Whether speaking/reasoned : Yes

Whether Reportable : Yes