

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

**CRM-M No.58386 of 2022 (O&M)
Date of decision : 14.12.2022**

Gajender Singh

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Prabhjeet Singh Sullar, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

The petitioner has prayed for grant of pre-arrest bail in FIR No.661 dated 17.11.2022 registered under Sections 409, 420 & 120-B IPC at Police Station City Sonipat, District Sonipat.

As per the allegations levelled in the FIR, the petitioner has been accused of serious financial irregularities and of having siphoned off heavy amount while employed as Head Master of a school.

Counsel for the petitioner has emphatically argued that it would have been the DAV Committee only who could have initiated the criminal proceedings against the petitioner and the complainant has no locus to initiate the present complaint. He further relied upon internal audit report of the DAV Managing Committee dated 09.03.2022 placed on record as Annexure P-4 to submit that majority of the allegations levelled against the petitioner were ordered to be dropped and still the same have been made subject matter of the FIR. He further submits that the petitioner is already before writ Court wherein he has laid challenge

to the disciplinary proceedings initiated against him by the Managing Committee and therein notice has been issued to the employer including notice regarding stay. Reliance is being placed upon order appended as Annexure P-15 passed in CWP No.27618 of 2022 dated 02.12.2022. He further contends that all the allegations levelled against the petitioner are based upon documentary evidence and thus custodial interrogation of the petitioner would not be warranted in the present case and in the light of ratio of law laid down in *Arnesh Kumar Vs. State of Bihar & anr.*, **2014(8) SCC 273**, the liberty of the petitioner being paramount consideration he will be entitled for pre-arrest bail. He further submits that offence under Section 409 IPC cannot be alleged, the petitioner being employee.

I have heard learned counsel for the petitioner and have gone through the records of the case.

Admittedly, the petitioner was working as Head Master and was thus not only in Supervisory but also the Managerial Capacity over the school and its assets/resources. Thus to say at this stage that offence under Section 409 IPC would not be made out against the petitioner would be pre-judging the issue in hand. So far as the plea with respect to internal audit is concerned, counsel for the petitioner is not in a position to dispute the fact that on the basis of such internal audit, the petitioner has been charge-sheeted and is facing disciplinary proceedings. The question as to whether the extent of embezzlement as projected in the FIR matches with the internal audit or not cannot be subject matter of present petition wherein the petitioner is seeking pre-arrest bail.

I have perused the notice of motion order dated 02.12.2022 passed by this Court in CWP No.27618 of 2022 wherein indulgence is being granted for the reason that the petitioner was charge-sheeted on the basis of audit report without affording him opportunity of hearing which as per him in the teeth of Rule 22.4 of the Administrative Manual DAV College Managing Committee.

In view of seriousness of the allegations levelled against the petitioner and the fact that the petitioner was enjoying a post wherein he was supposed to be custodian of assets of educational/charitable institution, this Court does not find it to be a case wherein jurisdiction should be exercised to grant pre-arrest bail. With respect to the plea based upon ratio of law laid down in ***Arnesh Kumar's case (supra)***, the petitioner appears to be in such a position wherein the allegations cannot be said to be only related to documentary evidence.

As per settled law petitioner is required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In ***Gurbaksh Singh Sibbia vs. State of Punjab, 1980(2) SCC 565***, Apex Court has held that :-

“..That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while

deciding an application for anticipatory bail....”

Likewise while reiterating the law laid down in ***Gurbaksh Singh Sibbia's case (supra)*** Apex Court in ***Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1*** held that :-

“(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it.”

As per settled law (***in C.B.I vs. Anil Sharma, 1997(7) 187***) there is a qualitative difference between custodial interrogation and questioning a person insulated by pre-arrest bail. Investigation at this nascent stage cannot be belayed.

The nature and the seriousness of the allegations levelled against the petitioner and his conduct are the relevant factors for the adjudication of the present petition.

In view of the aforesaid circumstances, this does not appear to be a fit case to grant extra ordinary relief of anticipatory bail to the petitioner. Consequently, the same is dismissed.

Needless to say nothing recorded hereinabove should be construed as expression on merits of the case.

(PANKAJ JAIN)
JUDGE

14.12.2022

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No