IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-58848 of 2022
Date of decision: - 16.12.2022

Ashwani Kumar

......Petitioner

Versus

State of Punjab

......Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : - Mr. T.P.S. Tung, Advocate, for the petitioner.
Mr. Adhiraj Singh, AAG, Punjab.
Mr. Manvender Chauhan, Advocate, for the complainant.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.0039 dated 12.03.2022 under Sections 420, 467, 468, 471, 120-B IPC, registered at Police Station City Tarn Taran, District Tarn Taran.

As per prosecution version, FIR was originally registered against 6 named co-accused, on the basis of statement of Harpreet Singh son of Harbhajan Singh, resident of Ganga Singh Nagar, Tarn Taran, recorded on 12.03.2022 with respect to cheating and fraud alleged to have been committed with him by Gursahib Singh, resident of Sultanpur Lodhi, and his associates, after Gursahib Singh approached the complainant in the month of April-2021 and represented himself to be an agent of a Jordan based company, which works under the name and style of "Shipco Projects" and deals in property business and other projects in India with each project having a turn over of hundred crores. Gursahib Singh enticed the complainant to invest in the said company and to become shareholder of the same, whereafter the money, invested by complainant, would become double and shall be paid to the complainant through Reserve Bank of India and would be tax free. Gursahib Singh also joined other share holders of the company through conference call, including Vijay Kumar accused, who appraised the complainant about the business undertaken by the company and further informed that the company has its head office in Indore, Madhya Pradesh, and that Mr. Santosh Shah is the MD of the said company, who shall be visiting Dharamshala shortly. Gursahib Singh arranged meeting of complainant with Vicky Kumar, Manager of the company, Santosh Shah MD and a person, namely, Ashwani Kumar (present petitioner) at Dharamshala. Complainant was asked to invest a minimum amount of rupees One crore in Athenes International, which is the subsidiary company of Jordan based company, pursuant to which at the first instance complainant deposited Rs.25,40,540/- in the account of company through RTGS. Thereafter, complainant gave Rs.14,00,000/- cash and Rs.3,45,000/- by way of cheque payment, which cheque amount was credited in the account of MD Santosh Shah. Thereafter, complainant further invested Rs.50,00,000/- in the company on the asking of Gursahib Singh and later Rs.16,00,000/- in the HDFC account of Gursahib Singh. However, complainant was never made any payment, despite the said investment.

After accused Rahul alias Vijay Kumar was arrested in the present FIR, Rahul alias Vijay Kumar disclosed that he alongwith

Santosh Kumar Shah, Sanjeev Rana, Ashwani Kumar (present petitioner) and Gursahib Singh, had prepared a fake company in the name and style “Jorden Based Company” on the pretext of alluring the public to invest money and thereafter to cheat the public and that the said company has cheated the complainant about Rs. 1 Crore. On the basis of said statement of accused Rahul, vide DDR no.40 of 27.08.2022, the complete particulars of petitioner, who was earlier also named in the body of FIR, were entered.

Learned counsel for the petitioner submits that the petitioner, who is a government servant and presently working as XEN in the Public Works Department, is innocent and has been falsely implicated in the present case and no money whatsoever has been transferred in the account of the petitioner. He has no role in the alleged offence. Learned counsel further submits that the petitioner is ready and willing to join the investigation.

Per contra, learned State counsel, assisted by learned counsel for the complainant, submits that the allegations are serious in nature and the petitioner has been named as a conspirator with other co-accused and they all have named the petitioner as a member of the gang which has defrauded the general public on the pretext of giving heavy returns on the investment made in their companies. It has further been submitted that as a matter of fact, earlier also with similar kind of allegations, FIR No.0196 dated 28.09.2017 under Sections 420, 120-B IPC was registered at Police Station North, Chandigarh, in which the petitioner was the main accused. Contents of the said FIR read as under:

> *To, The SSP, Chandigarh. SUB Fraud by showing fake UK based company on internet as well as fake online permissions on internet to buy super Antique. Respected Sir/Madam, I have been cheated by the following people Mr. AR Rahman, Mr. Udit Nagar, Mr. Arif Chaudhary, Mr. Ashwani Kumar Palia, Mr. Ramesh and Mr. Raja in the following manner. One Mr. Sarbjeet Gill came in contact with me and met me at my friends office at SCO 13 first floor Sector 9 Chandigarh on 20th June, 2017 and told me that he was in contact with certain people who knew somebody who had a super antique (RP) with them in Dharamshala which they wanted to sell, he introduced Mr. Ashwani Kumar Palia by taking him on conference call who told me to open the internet and google super antique RP and made me read the various functions and also made me google the price of the super antique RP which was amazingly high. Mr. Sarbjeet Gill then fixed a price with me and asked me to arrange a company which could buy it and whatsoever the company pays over the asked price can be taken by me. I through a friend of mine Mr. Iqbal Qureshi met Mr. Arif Chaudhary who introduced us to Mr. A.R. Rahman and Mr. Udit Nagar CEO and Operations Head of Universal Mines and Minerals Corporation in India. They both showed me their company website which showed that their was a UK bound company having its head office at 601 International House, 223 Regent Street, London W1b2qd United Kingdom. They showed required permissions to buy such articles physically as well as online on internet and they exchanged various mails with me from the company mail making things look absolutely genuine. They asked me to deposit a fee from the company*

mail making things look absolutely genuine. They asked me to deposit a fee of 7 lacs so that they can bring the required packing and also arrange the token of Rs.10 crore to be paid to the seller after testing of the material if the material was found ok. I paid them a fee of Rs.7 lac and Mr. Udit Nagar along with his team reached Dharamshala on 29th June, 2017 at around 3 am in the morning and stayed in a hotel booked by me. In the morning Mr. Sarbjeet Gill and his associates introduced us to Mr. Ashwani Kumar Palia and Mr. Raja stating that they were the owners of the super antique along with one Mr. Ramesh who was at that time with the material in some room where they were to take me and the company people for testing. Me along with one of Mr. Sarbjeet Gill's Associate, Mr. William Dean and Mr. Udit Nagar and his scientist started for the spot with Mr. Ashwani Kumar Palia and Mr. Raja leading us in their car. Mr. Ashwani Kumar Palia and Mr. Raja started moving in different direction that what we were told and after some distance Mr. Udit Nagar stopped the vehicle and refused to go any further as he said that his company does not allow him to go to undesignated place and henceforth he said that movement was over and they would have to come next time as the designated time was over. We agreed thinking it to be a technical issue. In the meantime, Mr. Ashwani Kumar Palia and Mr. Raja demanded Rs.5 lacs for paying to Mr. Ramesh to bring the article down from his place in the jungle. They were paid Rs.5 lacs in front of Mr. Sarbjeet Gill and his associates by me. For the next visit the company took Rs.5 lacs from me and Mr. Udit Nagar and his team reached Dharamshala on the night intervening 6th and 7th July, 2017 and in the morning of 7th July, 2017, when we reached the spot where testing was to be done, Mr. Udit Nagar and his team refused to do the *testing saying that there were mobile towers on the building and testing the material could cause a blast and thereafter Mr. Ashwani Kumar Palia told that Mr. Ramesh would only move to a location which he likes and then get the material tested and in all this the time was wasted and at 2 pm Mr. Udit Nagar said that time was over and we had to arrange for another visit. Now came the real twist in the tail next day as Mr. Ashwani Kumar Palia called me and told me that now he and Mr. Ramesh would like to see Rs.15 crore token first and thereafter only they will show that material to the company for testing. I talked to the CEO of the company Mr. A.R. Rahman who demanded Rs.45 lac for showing the token first. I paid him Rs.45 lac and thereafter Mr. Udit Nagar along with his team reached on 17th July, 2017. In the morning on 18th July, 2017 Mr. Ashwani Kumar Palia along with Mr. Ramesh reached my hotel from where two of Mr. Udit Nagar's associates went along with me Mr. Ashwani Kumar Palia and Ramesh to see the token advance for Rs.15 crores and when we reached the place of two people very smartly said that only two of us can see the money so they left me down in the car and took Ashwani Kumar Plaia and Ramesh along with o\who they left me down in the car and took Ashwani Kumar Palia and Ramesh along with who after some time returned and told me that they had seen the cash and were satisfied after which we returned to our hotel and Ashwani Kumar Palia told Ramesh to bring the material thereafter he did not return for some time and when Mr. Ashwani Kumar Palia called then Ramesh told him that his uncle opened the material to see if the thing was still ok or not resulting him getting exposed and that he was vomiting blood. In the meantime, I called up Mr. A.R. Rahman to tell him what had happened on listening to my call he said he was also in Dharamshala due to* *showing of cash and he would come to our hotel. He came and accomapnied us to the spot where a person was lying on the ground with a rod like thing nearby. Mr. A.R. Rahman along with two of his associates tested the rod and thereafter packed it in some stuff and told me that the super antique was absolutely genuine and had got overheated and needed to be buried 6 to 7 feet under the ground for at least 3 days so that it could cool down and thereafter it need to be packed and brought to the hotel and then the company will repack in their own kit. He assured us the material was absolutely genuine. Mr. A.R. Rahman again demanded Rs.25 lacs for the kit and movement for which I again made the payment to him thereafter Mr. Udit Nagar along with his team arrived in Dharamshala on 23rd July, 2017, next day we along with Mr. Udit Nagar's team reached the spot where Mr. Ashwani Kumar Palia took us and Ramesh was already waiting for us. Mr. Udit Nagar and his team took full day to pack the rod though we were told that it would actually take two hours only and in evening when the material was packed Mr. Ramesh asked for immediate payment of money which was refused by Mr. Udit Nagar and Mr. A.R. Rahman on the pretext that it was late and payment could be made next morning only. Mr. Ramesh agreed to come and stay in the hotel for the night but told me that he would walk down alone after meeting his people. He never came and Mr. Ashwani Kumar Palia told me that he will come the next morning. Next morning the company laid down a new condition that their person will get a photo clicked with the material and only thereafter they will show the cash to this Mr. Ramesh and Mr. Ashwani Kumar Palia did not agree and at two o' clock Mr. Udit Nagar said that the time was over and we will have to arrange for another visit. Another visit was organized for* *which I again paid Rs.35 lac. Mr. Udit Nagar reached on 11th August, 2017. I booked the Hotel Pavilion where the entire exercise was to be done. Mr. Ramesh met me around 10 pm at the Dharamshala bus stand and was to bring the material at 8 am the next day i.e. 12th August, 2018. At around 3 am on 12th August, 2017 he called me and told me that his uncle had died and he was going back to his village and he will not come in the morning and thereafter he switched off his mobile. Now, I have come to know from people that this is an organized crime done by there on regular basis and the kingpin of this crime is Mr. Ashwani Kumar Palia and Mr. Raja who have concocted this story along with Mr. Ramesh of having this material and once the company papers are shown to them they get in touch with company people and organized loot is done by them and the company by befooling the person and sharing the money paid by the person. I have been cheated of Rs.1 crore 22 lacs plus I have incurred an expense of around 15 lacs for travelling as well as booking hotels hence I request you to kindly look into matter and register an F.I.R. against Mr. Ashwani Kumar Palia, Mr. Raja, Mr. Ramesh, Mr. A.R. Rahman, Mr. Udit Nagar and Mr. Arif Chaudhary for cheating me and showing me, fabricated permissions and fake super antique material and looting my hard earned money. Thanking You in anticipation. Regards, Sd. Prem Singh Rana."*

I have heard learned counsel for the parties and perused the record.

Earlier, anticipatory bail application of the petitioner was dismissed by the Court of learned Sessions Judge, Tarn Taran, vide order dated 08.12.2022 by recording the following findings: -

> *"7. Perusal of the FIR and the investigation record reveals that applicant-accused Ashwani Kumar was named as conspirator with the named co-accused at the very first instance. Thereafter, during course of investigation, when the co-accused were arrested, almost all of them, named applicant-accused as the member of a gang, which has been constituted to defraud and cheat the general public on the pretext of giving heavy return on the investment made in their companies. The complainant has no prior enmity with applicant-accused. The fact that applicant-accused has been named at the first instance indicates active connivance of applicant-accused with the co-accused, in the entire occurrence. No doubt, this Court has granted regular bail to some of the co-accused, however, all the said coaccused have undergone their custodial interrogation and have facilitated further investigation. Allegations against applicant-accused are serious in nature, who is stated to be involved in a number of similar scams and to be instrumental in lending credibility to the fake claims, by virtue of him, being a public servant. No ground is, therefore, made out to extend the concession of anticipatory bail to the applicant-accused. The bail application is, accordingly, dismissed. File be consigned to the record room."*

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....."*
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> *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."*

Keeping in view the above facts and circumstances, moreso, the allegations leveled against the petitioner, coupled with the fact of seriousness of offences and his antecedents 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)
16.12.2022 **JUDGE**
R.S.

Whether speaking/reasoned : Yes

Whether Reportable : Yes