

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

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CRM-M-87-2023

Date of decision : 05.01.2023

Mukesh Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Abhijeet Sharma, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. A.G., Haryana
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.935 dated 19.10.2022 registered under Sections 420, 465, 467, 468, 471 and 167 of the Indian Penal Code, 1860 and Section 66 of the I.T. Act at Police Station Civil Line, Sirsa.

Brief facts of the case are that a complaint was received from complainant-Pankaj, District Employment Officer, Sirsa alleging that Mukesh Kumar (the petitioner), who is now undergoing suspension, was posted at the post of '*Saksham Yuva Yojna*' w.e.f. 06.11.2019 to 29.09.2020 and then 29.12.2020 to 20.06.2021. During the period w.e.f. 30.09.2020 to 28.12.2020, when he was even not posted on the said post, he while misusing the govt. password, gave benefits to the beneficiaries who were even not eligible while taking the benefit of the fact that a google-sheet had been prepared by him in his computer in which particulars of some fake beneficiaries were

mentioned along with some codes. When the online files of unemployed beneficiaries were compared with the files available on the record, Sh. Depender, Clerk, found that 07 files of beneficiaries were there who previously getting the unemployed allowance but later on their files were found to be rejected from the portal on 19.07.2021. When Sh. Depender, Clerk, telephonically contacted the said beneficiaries, he found that mobile numbers of some of the beneficiaries were linked with the bank account of the petitioner. The matter was enquired by District Employment Officer, Sirsa and the petitioner was found guilty. After suspension of the petitioner, a Committee was constituted wherein it was decided to lodge FIR against the petitioner.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The posting orders on the post of '*Saksham Yuva Yojna*' was issued by the higher authorities and no personal request was made by the petitioner as he was only doing his job and following the orders of the higher officers. There is no evidence to connect the petitioner with the alleged commission of offence because during the period w.e.f. 30.09.2020 to 28.12.2020 when the alleged fraud was committed, the petitioner was even not posted on the above-said seat and therefore, the question of fraud, allegedly committed by him does not arise at all. In fact the petitioner is made a scapegot by the higher officials. Nothing has to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner duly co-operated during the departmental inquiry and appeared before the Committee as and when

his presence were required by them. The petitioner is also ready and willing to join investigation. Therefore, the petitioner may be granted anticipatory bail.

Notice of motion.

On the asking of the Court, Mr. Munish Sharma, Asstt. A.G., Haryana, who is present in the Court, accepts notice on behalf of the respondent-State and opposed the present petition on the ground that the petitioner during the period w.e.f. 30.09.2020 to 28.12.2020 when he was not even posted on the post of '*Saksham Yuva Yojna*', misused the govt. password, gave benefits to the beneficiaries including his wife who were not even eligible and embezzled amount of Rs.14,22,000/-. The custodial interrogation of the petitioner is required for thorough investigation of the case. Therefore, the present petition may be dismissed.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. The matter was enquired by the District Employment Officer, Sirsa and in the presence of all the Staff Members, the petitioner admitted his fault in written and also admitted that transaction of Rs.14,22,000/- had been made by him. During investigation it was found that one of the beneficiaries was Smt. Poonam, wife of the petitioner and the petitioner by uploading fake documents on the Portal, embezzled the govt. funds.

Furthermore, investigation is still going on in the present case. The custodial interrogation of the petitioner is required for thorough investigation of the case and for recovery of mobile phone, sim, computer and embezzled amount of Rs.14,22,000/- and fake

documents prepared by the petitioner. 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.”

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

05.01.2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No