IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-225-2023 (O&M)
Date of Decision:06.10.2023

Rahul Gakhar …Petitioner

Vs.

State of Punjab and Anr. …Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Rajiv Kataria, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Puneet Kumar Bansal, Advocate
for the complainant.

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N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 438 Cr. P.C with a prayer to grant of anticipatory bail in case FIR No.272 dated 06.12.2022, under Sections 420,465,467,468,471,120-B of IPC registered at Police Station Sadar Ferozepur, District Ferozepur (Annexure P-1).

2. The FIR in the present case was got registered by Amarti Devi, Development Officer, retired, who had moved an application to Senior Superintendent of Police, Ferozepur and after holding the detailed enquiry in her application, the present FIR was registered. As per the complainant, she got prepared many fixed deposits for a total sum of Rs.72 lacs from Rahul Gakhar, accused, who was agent of post office, Ferozepur. Out of the said FDRs only two FDs i.e. 3502207113 and 3502191573 were correct, but no record was available in the post office Ferozepur, regarding rest of other FDs. The complainant went to the Post Office, Railway Station, Ferozepur Cantt. and got checked all of her FDs and after checking the record, the officials of post office

informed that they had the records of only two FDs and rest of the FDs were not registered in their record. The complainant further stated that petitioner/accused himself had admitted that he had fabricated FDs by putting fake seals and had committed fraud with her under pre-planned conspiracy and had caused financial loss to the tune of Rs.72 lacs. Howover, out of the said amount, the accused had returned Rs.16,90,000/- to her.

3. Learned counsel for the petitioner submitted that the petitioner had been falsely involved by the police and no date has been mentioned as to when the complainant entrusted the amount to the petitioner for the purpose of getting FDs and only bald and vague allegations have been made in the FIR. Still further, Amarti Devi had been extending loans to the petitioner as they were known to each other and the petitioner had been helping her, while loans were extended to other persons. Learned counsel further contended that the present case was based on documentary evidence and the petitioner was entitled to concession of bail.

4. On the other hand, learned State counsel had referred to Para No.3 and Para No.4 of the detailed status report, which had been submitted by Deputy Superintendent of Police (City), Ferozepur and Para No.3 and 4 of the status report have been reproduced below:-

> 3.“*That during enquiry, Superintendent of Police (Headquarter), Ferozepur joined both the parties in the enquiry: recorded their respective statements and also obtained the concerned documents and record of the Post Office. In her statement, complainant Amriti Devi stated that she retired from the office of Rural Development and Panchayat in the year 2005 as Development Officer and at the time of retirement, Punjab Government gave her due amount and she deposited the same in Post Office, Railway Station, Ferozepur Cantt. She met accused/petitioner Rahul Gakhar in the year 2008, who was*

working as Agent in the Post office. The complainant became acquainted to petitioner Rahul Gakhar, who allured her that she did not need to come to the Post Office and he would collect the money from her house and will deposit the same. The complainant believed the assurance given by petitioner Rahul Gakhar and handed over her entire hard earned money to him on intervals. Due to old age, she did not go to the Post office as her health remained ill. Apart from this, complainant had many other FDs in the Post office. At the time of maturity of the said FDs, petitioner Rahul Gakhar and his wife Shivani used to take copies of FDs and on renewal of FDs, new copies were given to complainant. Sometime ago, complainant went to the Post Office to enquire about her FDs and she came to know that all the accounts in respect of the FDs being given by petitioner Rahul Gakhar do not exist in the Post Office. When the complainant talked to petitioner Rahul Gakhar regarding the same, he was not ready to talk on this. The complainant further stated that the accused gave FD No.3569059540 of Rs.1 Lakh for 5 years, FD No.7835102809 of Rs.1Lakh for 5 years, FD No.7835110027 of Rs.2 Lakh for 5 years, FD No.3153863 of Rs.3 Lakh for 5 years, FD No.3261897129 of Rs.2 Lakh for 5 years, FD No.3628878433 of Rs.2.24,400/-, FD No. 3913847755 of Rs.4 Lakh for 5 years, FD No. 3517737070 of Rs.2 Lakh, FD No.7835064747 of Rs.1,32,000/- for 5 years, FD No.7835063813 of Rs.1,32,000 for 5 years, FD No.3517755395 of Rs.1.32,000/-, FD No 3929501313 of Rs 3,50,000/- for 5 years, FD No 2104977 of Rs.3 Lakh for 5 years, FD No. 7835114296 of Rs. 132,000/-, Account No.7835101913 of Rs.1,70,000/-, FD No.7835064997 of Rs. 1,60,000/- for 5 years, FD No.3421736893 of Rs.3,69,500/-, FD No. 3810844332 of Rs.1,81,000/- for 5 years, FD No. 3467189134 of Rs.1 Lakh for 5 years, FD NO.2104963 of Rs.2 Lakh, FD No. 3625438395 of Rs. 2,01,000/-, FD No. 2104989 of Rs.1,50,000/- for 5 years, FD No.3810844332 of Rs.1,81,000/- for S years, FD No. 3517738916 of Rs.3 Lakh for 5 years and FD No. 3517770282 of Rs. 2,64,000/- for five years to her after fabricating the same by putting fake seals. The complainant further *stated that apart from this, 14 other FDs and a copy of Saving Account No.562211 is with petitioner Rahul Gakhar, who is not giving the same to her. The petitioner has committed cheating with complainant for about Rs. 72,00,000/-, out of which, Rs. 16,90,000/- has been deposited by him in her Account No.3452000100062461 on making repeated requests by her and is not returning the remaining amount to her. The complainant further stated that she receives Rs. 50,000/- as pension and she had saved some amount out of her pension.*

"4. That after conducting detailed inquiry, the Superintendent of Police (Headquarter), Ferozepur vide his enquiry report No 118 P.C/Reader- D.S.P (Headquarter), dated 17.11.2022 came to the conclusion that the complainant retired as Development Officer from the Department of Rural Development and Panchayat Officer in the year 2005. At the time of retirement, she had received huge amount from Punjab Government and has been getting pension of Rs.50,000/- The complainant has deposited whole of her amount in the Post Office, Railway Station, Ferozepur Cantt in the shape of FDs. In the year 2008, complainant met with accused Rahul Gakhar, who was working as Agent in the Post Office and she developed good acquaintance with petitioner Rahul Gakhar, who allured the complainant that she did not need to come to the Post Office and he would collect the amount from her and will deposit the same Being allured, complainant gave whole of the amount received by her at the time of her retirement and savings made by her on intervals to petitioners Rahul Gakhar to deposit the same in the Post office. During enquiry, the Enquiry Officer issued a Letter No 2105-Reader-DSP(H), FZR, dated 29.08.2022 to the Post office, Ferozepur Cantt to collect the record pertaining to the above said Accounts, who gave information regarding 18 Accounts, out of which, there is no record of 6 Accounts available in the Post Office and rest of the 12 Accounts are registered in the name of different persons. During investigation, it was found that petitioner Rahul Gakhar collected money from the complainant,

but he did not deposit the same in the Post Office. After conducting detailed enquiry, the Investigating Officer vide his aforesaid investigation report recommended for registration of FIR against petitioner Rahul Gakhar after obtaining legal opinion from Deputy D.A. (Legal). Accordingly, the opinion of Deputy D.A. (Legal) was obtained, who thoroughly perused the whole of the record of the case and vide his opinion dated 24.11.2022 opined for registration of FIR Under Section 420/465/467/468/471 IPC against petitioner Rahul Gakhar, which ultimately resulted into registration of aforesaid FIR against the petitioner."

5. Learned State counsel further submitted that the petitioner had fabricated FDs by putting fake seals and had committed fraud with the complainant. From the investigation, it has been found that, as per the record of the post office regarding 18 accounts, no record of 06 accounts was available in the post office and rest of the 12 accounts were registered in the name of different persons. Apart from that, the petitioner was also involved in another case in FIR No.83 dated 13.08.2021, registered under Section 307,323,427,34 of IPC and Section 25,27,54,59 of Arms Act, Police Station Cantt Ferozepur.

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

7. The Hon'ble Supreme Court has held in the matter of ***P.Chidambaram Vs. Directorate of Enforcement, 2019(4) RCR (Criminal)875*** as follows:-

"67 *Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.FC, 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as* *to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory ball to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory ball. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy".*

8. In the present case, the petitioner is the main accused, against whom serious allegations have been levelled by the complainant. The petitioner had forged and fabricated the FDs by putting fake seals of the post office on the same. Even he had deprived the complainant of the earning of her whole life. Thus, keeping in view the gravity of the offence, the petitioner is not entitled to concession of anticipatory bail. Apart from that, even the investigation in the present case is at the nascent stage and the grant of anticipatory bail at this stage, may frustrate the Investigating Agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Since in such interrogation, accused may elude, if the accused knows that the he is protected by the order of the Court. Thus, to conduct the investigation effectively and to take the same to its logical end, the custodial interrogation of the petitioner is required and present petition is ordered to be dismissed.

9. All other pending applications, if any, stands disposed off.

(N.S.SHEKHAWAT)
JUDGE

06.10.2023
hitesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No