

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-4967-2023

Date of Decision:-03.07.2023

Kuldeep Singh.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Lalit Singla, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for grant of anticipatory bail in case FIR No.103 dated 06.08.2022 under Sections 420 and 120-B IPC registered with Police Station Moonak, District Sangrur.

2. The present FIR came to be registered on the basis of complaint under Section 156(3) Cr.PC filed by complainant Raj Kumar. It has been alleged by the complainant that he was having a combine machine and had taken the same to M.P. in the harvesting season. Similarly accused Hari Singh had also taken his combine to the said place. Hari Singh came into contact with the complainant through his brother Sukhpal Singh. Hari Singh assured the complainant that he would get his old combine machine sold and would provide him a new one. The complainant agreed to the same. Subsequently, Hari Singh got introduced the complainant with Petitioner-Kuldeep Singh and Amrinder Singh for providing a new combine machine. The accused persons took different amounts of money on different dates from the complainant for the purchase of the combine machine and the complainant had also transferred some amount in the bank accounts of the accused persons. However, the accused failed to provide any such combine machine nor did they return the amount to the complainant. A cheque of

Rs.2 lac was handed over in favour of the complainant which was also dishonoured due to insufficient funds. Thereafter the accused entered into a compromise for the return of an amount of Rs.5,40,000/- and another postdated cheque for Rs.4,20,000/- was also handed over which was also dishonoured. Thus the accused including the petitioner had cheated the complainant.

3. The Counsel for the petitioner contends that taking the allegations to be true, it is a pure civil dispute which has been given the colour of criminal case. No recovery was to be effected from the petitioner. Co-accused Hari Singh had been granted the concession of anticipatory bail whereas co-accused Amrinder Singh had been granted the concession of interim bail. Therefore, the petitioner was entitled to the grant of anticipatory bail.

4. The Counsel for the State on the other hand contends that the petitioner is the main accused. Amount were transferred to the bank accounts of the petitioner. The cheque in question had been dishonoured which had also been issued by the petitioner. Despite undertakings given before this Court that he was ready and willing to return the amount, no such amount is forthcoming. Therefore, the nature of the allegations against the petitioner as also his conduct during the course of the pendency of the present petition does not entitle him to the grant of anticipatory bail.

5. I have heard learned Counsel for the parties.

6. On 01.02.2023 the following order was passed:-

“ Learned counsel for the petitioner contends that the allegations against the petitioner is that the complainant purchased a Combine Machine from the accused-petitioner who is the proprietor of the firm and transferred the amount to his account and the dispute is civil in nature. He further submits that the two other co-accused have already been granted bail by this Court and that the petitioner is ready to settle the matter.

Learned State counsel opposes the prayer on the ground that the petitioner is the beneficiary and the entire amount was transferred to his account in lieu of which neither the Combine Machine was delivered to the complainant nor the amount received by the petitioner has been returned back to the

complainant. He also refers to Para 18 of the FIR wherein it has been specifically stated that earlier also the matter was compromised and the petitioner agreed to return Rs.5,40,000/- by 31.5.2022, as per the compromise dated 19.4.2022, but he did not honour the same.

Faced with this situation, learned counsel for the petitioner submits that the matter may be sent to the Mediation Centre before the trial Court at Sangrur for settlement as he is ready to settle the dispute.

Notice of motion for 21.2.2023.

In view of the statement made by learned counsel for the petitioner, the private parties are directed to appear before the Mediation Centre before the trial Court at Sangrur on 6.2.2023.

In the meantime, the arrest of the petitioner shall remain stayed.”

Thereafter on 21.02.2023 the following order was passed:-

“ As per mediation report dated 20.02.2023, complainant has not appeared before the mediation, though, he has been telephonically conveyed the dates. Now, the proceedings before the Mediator are fixed for 27.02.2023.

In view of the above, adjourned to 13.03.2023.

Interim order to continue.”

On 13.03.2023 the following order was passed:-

“ Report received from District Legal Services Authority, Sangrur. As per report, the parties could not arrive at an amicable settlement.

In view of above, learned counsel for the petitioner prays for short accommodation to complete his instructions with regard to settlement.

On his request, adjourned to 20.03.2023.”

On 20.03.2023 the following order was passed:-

“ *Learned counsel for the petitioner prays for one more opportunity and on instructions from petitioner-Kuldeep Singh, who is present in the Court, submits that he is ready to pay an amount of Rs.3,50,000/-, which was received through bank transactions.*

On his request, adjourned to 15.05.2023.

Interim order to continue.”

On 15.05.2023 the following order was passed:-

“ *Mr. Lalit Singla, Advocate has put in appearance on behalf of the petitioner, submits that he has been engaged in this case today only and seeks time to have complete instructions and also undertakes to file fresh power of attorney.*

Adjourned to 22.05.2023.

Interim order to continue, till the next date of hearing.”

7. A perusal of the contents of the FIR and the investigation conducted so far would clearly establish that the petitioner is undoubtedly the main accused. He promised to return the amount received by him prior to the registration of this FIR and during the pendency of this petition. However, he has not returned the same and on the contrary has now denied to repay the complainant. Further, because the custodial interrogation of the petitioner is not required would not be a ground to grant concession of anticipatory bail. The Hon'ble Supreme Court in the case of “***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***”, held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“ *It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the*

purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. **There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail***”.

8. In view of the serious nature of the allegations against the petitioner, which are *prima facie* established and the fact that he is the main accused as also the conduct of the petitioner wherein he has undertaken to refund the amount to the complainant prior to the registration of the FIR and

also during the pendency of the present petition, but has now reneged from the undertaking, he does not deserve the concession of anticipatory bail.

10. In view of the above, finding no merit in the present petition, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

July 03, 2023

Vinay

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