IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5194-2023
Date of decision :16.02.2023

RAHUL NAGAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.K. Tripathi, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.0433 dated 13.10.2022 (Annexure P-1) registered under Sections 406/420/34 IPC at Police Station IMT Rohtak, District Rohtak.

2. The brief facts of the case are that the FIR came to be registered on the basis of one complaint bearing No.31881 dated 31.05.2022 from the office of Home Minister Haryana along with an application given by Surender Kumar son of Sh. Hukam Chand, resident of Village Baliyana Ward No.10, District Rohtak and investigation report of the DSP Sampla which were received in the Police Station. It is stated in the complaint given by Surender Kumar that he was having two sons. Vikas was his eldest son. Vikas had friendly relations with Sharad Jain and Rahul Nagar (petitioner), residents of District Faridabad. Sharad Jain and Rahul Nagar had close relations with Ex.-M.P. Harinarayan Rajbhar. His (complainant) son Vikas was also a worker of

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the Bharatiya Janata Party and he (Vikas) was made District President of the OBC Organization in the year 2017. Thereafter, his son Vikas was in touch of Rahul Nagar. Sharad Jain and Rahul Nagar told his son that they were having very good relations with Harinaryana Rajbhar and he (Vikas) could be appointed as Chairman in some department and under this pretext they demanded Rs.40 lakhs from his son. He (complainant) was having one plot measuring 74 Sq. yards at Delhi-Rohtak road Baba Mastnath Trust Asthal Bohar which was sold by him for Rs.30 lakhs. In the month of August, 2020, Rs.40 lakhs were given to Sharad Jain and Rahul Nagar. Thereafter, Sharad Jain and Rahul Nagar assured his son that they had discussed the matter with Ex.-M.P. Harinarayan Rajbhar and very soon he (Vikas) would be got appointed Chairman of MSME Export Promotion Council, Haryana. Thereafter, on 02nd October, 2020 Harinarayan Rajbhar gave one appointment letter of Chairman of the above-said Department pertaining to Haryana. Thereafter, his son Vikas gave a Press Conference on 04.08.2020 at Rohtak that he has been appointed as Chairman. Thereafter, his son was called to the office of BJP, Rohtak and he was told that he had not been appointed as Chairman. Thereafter, his son Vikas inquired into the matter and he came to know that a forged appointment letter had been given to him and he had been cheated. Due to this reason Vikas was mentally disturbed. Thereafter, his son Vikas contacted Sharad Jain and Rahul Nagar and asked them to return Rs.40 lakhs. Out of this Sharad Jain gave one cheque of Rs.5 lakhs bearing No.363013 Indusind Bank, Sector-21, Faridabad. On 05.11.2020 Vikas presented the above-said cheque in

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PNB, Rohtak in his account but the said cheque was dishonoured. Thereafter, Vikas contacted Sharad Jain, who assured to return his amount after some time. Thereafter, despite his repeated requests the amount of Rs.40 lakhs was not returned to his son. His son Vikas become a victim of the above-said conspiracy of the three persons and they fraudulently obtained Rs.40 lakhs from him. His son was mentally disturbed because of the above-said fact. In the month of May, 2021 his son Vikas died. Thereafter, also his family repeatedly contacted Sharad Jain and Rahul Nagar to return the money but they put the matter off on one pretext or the other. On 23.09.2021, he had given a complaint to the S.P., Rohtak but no action was taken. On 24.11.2021 one complaint was given at C.M. Window, Rohtak. He was a senior citizen. His young boys had died. Legal action was sought against the accused.

On these allegations, the present case was registered under Sections 406, 420, 34 IPC.

Prior to the registration of the FIR, the allegations levelled in the complaint were inquired into by the ASP, Sampla, District Rohtak and the same were found to be correct. Some phone calls of the petitioner had also been recorded *prima facie* establishing the prosecution version.

3. The learned counsel for the petitioner contends that a perusal of the FIR would reveal that the petitioner has not cheated anyone. No specific allegations have been levelled against him. In fact, the instant FIR has been registered after more than 02 years from the date of the occurrence. The amount has been stated to have been given

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by the son of the complainant in the month of August, 2020. He had passed away due to Covid-19 pandemic and it was only thereafter that the present FIR got registered on 13.10.2023, after a gap of more than 02 years. The allegations are primarily levelled against one Ex.-M.P. Harinarayan Rajbhar who was the friend of the son of the complainant. The petitioner has been implicated only to extract money from him. It was the said Harinarayan Rajbhar who had given an appointment letter to the deceased son of the complainant. Even the cheques had been issued by Sharad Jain. He thus contends that as the allegations are vague and not substantiated, the petitioner was entitled to the grant of anticipatory bail.

4. A reply dated 13.02.2023 by way of an affidavit of Yashpal Singh, HPS, Deputy Superintendent of Police, Rohtak on behalf of the respondent-State has been filed by the State counsel. The same is taken on record. He contends that the petitioner was having good relations with the deceased-Vikas. In lieu of his appointment as Chairman of MSME, the petitioner along with his co-accused had received an amount of Rs.40 lakhs from the deceased by playing fraud upon him in collusion with each other. There were telephonic calls of the petitioner *prima facie* establishing the offence in question. The serious nature of the allegations levelled against the petitioner did not entitle him to the grant of bail. Even otherwise, the investigation has to be taken to its logical conclusion for which the custodial interrogation of the petitioner was necessary. He thus, contends that the present petition was without merit and ought to be dismissed.

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5. I have heard the learned counsel for the parties.

6. A perusal of the FIR and the reply filed by the State would clearly establish that the petitioner and his co-accused deceived the deceased son of the complainant to part with Rs.40 lakhs with an assurance that he would be appointed as a Chairman in some Department in the Government of Haryana. The prosecution case is further established from the fact that Sharad Jain, co-accused of the petitioner had issued cheques in favour of the son of the complainant which also came to be dishonoured. There are call detail records which would show that the petitioner was in regular contact with the deceased. An earlier complaint had also been made but no proper action had been taken therein as the accused are influential persons. Therefore, the serious nature of the allegations do not entitle the petitioner to the grant of anticipatory bail. Even otherwise, to take the investigation to the logical conclusion, the custodial interrogation of the petitioner is certainly necessary.

7. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** ***2022 Live Law (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*

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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.***

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> ***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. Keeping in view the seriousness of the allegations levelled against the petitioner and his co-accused along with the fact that custodial interrogation is certainly required to take the investigation to the logical conclusion, I find no merit in the present petition and the same is hereby dismissed.

9. However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

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