IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-5147-2023(O&M)

Date of Decision:-01.06.2023

Mandeep @ Monty.

......Petitioner.

Vs.

The State of Punjab.

......Respondent.

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

Present:- Ms. Manpreet Kaur Ghuman, Advocate for the Petitioner.

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

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JASJIT SINGH BEDI, J.

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.277 dated 06.12.2022 under Sections 420, 465, 468, 471 IPC and Section 66D of Information Technology (Amendment) Act, 2008, registered with Police Station Gobindgarh Mandi, District Fatehgarh Sahib.

2. The instant FIR came to be registered on the basis of letter dated 06.12.2022 sent by Sh. Pardeep Kumar, State Excise Officer Ward Number 03, Fatehgarh Sahib for the registration of case and the contents of the same are as under:-

> " *To, Assistant Commissioner State Excise, Fatehgarh Sahib Number 1589 dated 06.12.2022. Subject:- Utilizing the fake and false documents under G.S.T., for obtaining the fake, bogus G.S.T. Registration. Sir, it is brought in your knowledge on the subject noted above that in the various wards falling under the jurisdiction of the office of Assistant Commissioner State Excise, Fatehgarh Sahib, the online applications are being applied/given in the names of the various firms for taking the new registrations on G.S.T. Portal under Section 22 and Rule 8 of G.S.T. Act in the various wards falling*

under the jurisdiction of the office of Assistant Commissioner State Excise, Fatehgarh Sahib. These, registrations are being applied on line G.S.T. portal www.gst.gov.in, and the documents for obtaining the registration are being uploaded on line. According to G.S.T. Act, 2017, it is necessary to upload the under mentioned documents on line at G.S.T. Portal for obtaining the registration. 1) PAN of the owner of Firm, 2) Aadhar card/ proof of the residential address of the owner of the firm, 3) The address of the firm and proof of ownership, or rent deed and the proof of the land of the owner of that space. From the last some period it is known that using the fake and false documents by some persons, the bogus G.S.T. registrations are being applied. In the registrations applied by them, more than just on one stamp paper of the rent deed, the name of the owner and the name of the tenant and the receipt of the property tax, doing its Photoshop, the fake rent deeds are being fabricated and uploading these rent deeds on the G.S.T. Portal, the effort for obtaining the fake bogus G.S.T. Number is being done continuously. Apart from it, in these G.S.T. Numbers being applied, the photo of just only one person is being used. It is also worth pertinent to mention that the photo of a person on which is being applied and the Aadhar Card of which persons is being uploaded for obtaining the G.S.T. Number that is the photo of two different persons but the name and address is being placed just one and the same. The details of the registrations on the one and same stamp paper and receipt of the property tax, is mentioned in the enclosed Annexure A and B. In addition to it, in the receipts of the property tax duly uploaded for obtaining the G.S.T. registrations, doing the Photoshop of the address of the land/space and name of the owner, just only one and same receipt is being used in the various registrations duly applied. Apart from it, in the above said applications, the Photograph and the Photograph of the land of the firm, that is also, doing the Photoshop to just only one and the same Photograph that has been uploaded again and again. From the above said facts it is being clarified that the persons, those have applied for the G.S.T. Registrations, they have made the base to the fake and bogus documents so that obtaining the fake and false G.S.T. registrations, they can issue the fake bill and creating/claiming the Input fake and false Income Tax and passing on these Input Tax Pass to the other firms, they can cause the loss to the official revenue. It seems that joining by some persons, they wants to take the illegal *benefit of the on line process of G.S.T.procedure/channel and they want to cause the loss to the government revenue and there is the chance of causing the huge financial loss to the government revenue. Therefore you are humbly requested that for taking the legal action against these persons, it may be written to worthy S.S.P. Sahib, Fatehgarh Sahib so that the official revenue may be kept secured. Sd/- Pardeep 06.12.2022, State Tax Officer, Ward Number 03, Fatehgarh Sahib, that this letter has been sent to Assistant Commissioner State Fatehgarh Sahib by State Tax Officer, whereupon, Assistant Commissioner State Tax, Fatehgarh Sahib vide his office letter Number 1590 dated 06.12.2022, send the above said letter to worthy Senior Superintendent of Police, District Fatehgarh Sahib for taking further necessary action, the contents of which are as under:- "To, worthy Senior Superintendent of Police, District Fatehgarh Sahib, Number 1590 dated 06.12.2022, subject:- for taking legal action against the persons committing the embezzlement with the documents, for committing the fraud with the official revenue by taking wrong new registration under G.S.T. According to the enclosed report of Shri Pardeep Kumar, State Tax officer posted in this District, on the subject noted above, using the fake and false documents at the time of doing the registration under G.S.T. Act, 2017, it is recommended for taking the legal action against the persons committing the embezzlement, scam with the G.S.T. Department. Enclosing the report of the concerned State Tax Officer and the documents, the same are being sent to you for taking further necessary legal action. Sd/- Assistant Commissioner State Tax, Fatehgarh Sahib.*

After registration of the FIR, the investigation began. Accused Mangal Parbh Singh, Jharesh Singh, Dhaneshwar Kumar Singh, Rahul Kumar Mahto, Rahim Khan and Radhe Shyam had used one Stamp Paper No.C262180 for the purposes of a Rent Deed. Similarly, Ravinder Singh, Akaashdeep Singh, Pardeep Singh, Rajesh, Shyam Lal, Parminder Singh, Bande Kumar had also used one Stamp Paper bearing No.AS048705 for the purpose of a rent deed. Along with these, receipts of property tax and photos of the shops had been forged and uploaded on the Portal for applying for a GST number thereby causing revenue loss to the government. Thereafter an SIT was formed and during the investigation by the SIT an application was moved by Arfan Khan resident of village Lasara Lakhowas, P.S. Maloud against Dharamvir, Singh, Manpreet Singh @ Mani, Mandeep @ Monty (petitioner) and Sunny Kumar. He stated that above named persons had taken him into confidence obtained his identity proofs i.e. Aadhaar Card and Pan Card and had misused the same. In fact he was studying in B.A. Final in a college at Ludhiana. On 08.12.2022 he received a letter from Assistant Excise Commissioner, Fatehgarh Sahib. On opening the same he found that on his name a firm M/s Anand Enterprises whose GST Number was 03KQBPK6230BIZT had not deposited the due GST after sale and purchase. On enquiry he found that on his I.D. firm was running and allegedly doing crores worth of business but the GST had not been paid. It was also revealed that on 11.03.2022 one Dharamvir Singh who he (Arfaan Khan) knew had told him that one person Manpreet Singh @ Mani had a scheme which provided unemployment allowance of Rs.1500/- per month and the same would be given to him (Arfaan Khan). Other members of the team were Mandeep Singh @ Monty and Sunny @ Pagal. He (Arfaan Khan) had been allured by them (petitioner and his co-accused) and they had obtained his Aadhaar Card, Pan Card and Photograph. The same had been misused.

Based on the said statement of Arfaan Khan, Manpreet Singh @ Mani, Mandeep Singh @ Monty and Sunny Kumar were nominated as accused.

Sunny Kumar was arrested and on his statement, Rishabh Sood, Anil Sood, Surinder Singh @ Raju were nominated as accused.

Thereafter, Surinder Kumar, Rajvir Singh and Jagvir Singh were arrested. On 08.01.2023 on the statement of Surinder Singh, Jagvir Singh @ Jagga and Rajvir Singh @ Beeru were nominated as accused.

3. The Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. There was absolutely no evidence to suggest that the petitioner had committed any offence in question. In fact, no specific role had been assigned to him. He had been named in the disclosure statement of his co-accused which was inadmissible. As he was ready and willing to join investigation and the case was based on documentary evidence, no case for custodial interrogation was made out and the petitioner was entitled to the concession of anticipatory bail.

4. The Counsel for the State while relying upon the affidavits

dated 2.3.2023 and 27.03.2023 contends that the petitioner is one of the main accused. As per the statement given by Arfaan Khan, the petitioner along with his co-accused would collect identify proofs of various people through his co-accused Manpreet Singh @ Mani and then provide the same to accused Sunny Kumar who used to create forged rent deeds and agreements which were then handed over by him to another co-accused Surinder Singh @ Raju. Surinder Singh @ Raju used to create fake firms by using these fake ID proofs and fake rent deeds. He contends that during investigation the GST records of a firm namely M/s Anand Enterprises was collected whose GST Number was being operated by the petitioner. Two firms namely Ganesh Steel whose GST Number was 03FCLPK6991N1ZS and B.D. Enterprises whose GST Number was 03KWZPS6853Q1ZX were found to be involved in the trade with Anand Enterprises. However, on visiting the premises of the said firms, they were found to be non existent. He therefore contends that *prima faice* offence against the petitioner was clearly made out as was evident from the investigation conducted, so far since the petitioner was running fake firms based on forged and fictitious documents thereby cheating the State Government of Crores of rupees under the pretext of GST. It is his contention that as the offence was *prima facie* established and the record was to be recovered from the possession of the petitioner, the name of the real beneficiary was to be revealed, his custodial interrogation was certainly necessary and, therefore, he was not entitled to the grant of anticipatory bail.

5. I have heard learned Counsel for the parties.

6. 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***".

7. In the instant case, a perusal of the affidavits of the State dated 2.3.2023 and 27.03.2023 would show the manner in which the investigation was conducted and the specific role played by the petitioner. In fact he and his co-accused had set up a fictitious firm/companies and thereby cheated the government of crores of rupees. Thus, an offence is *prima facie*

established against him. Even otherwise, recoveries of various documents are to be effected from the petitioner and the names of the real beneficiaries are to be revealed. Therefore, the custodial interrogation of the petitioner is certainly required.

8. In view of the above observations and without commenting on the merits of the case, the present petition for grant of anticipatory bail stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

June 01, 2023
Vinay

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