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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7147-2023

Date of decision :03.03.2023

SANJAY KUMAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ashok Kaushik, Advocate
for the petitioner.

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

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.0249 dated 29.12.2022 registered under Sections 409, 420, 467, 468, 471, 120-B IPC at Police Station Bicchor, District Nuh (Mewat).

2. The brief facts of the case are that a raid was conducted by CM Flying squad, Rewari on the complaint of irregularities and embezzlement in the MNREGA scheme and misappropriation of public money against the then Sarpanch of Village Bisru and the then BDPO and other Government officials who were found to have committed embezzlement of Rs.9,42,000/-. The spot was inspected by the complainant SI Satender Kumar along with revenue officials including the Patwari and Tehsildar. It was found on the spot that there was a Gair Mumkin pond in the land of owner Mohammad Ayyub R/o Bisru. It was

further revealed that the land was never given to the Panchayat through any proposal. Mohammad Ayyub had already taken a loan of Rs.4,10,000/- on the said land and it was kept mortgaged with the Canara Bank. However, as per the record, on the said land construction work was sanctioned for renovation of the pond under the MNREGA Scheme and for that, an amount of Rs.9,94,000/- was sanctioned out of which Rs.9,42,000/- had been disbursed. It was found during the course of the enquiry that Sarpanch Rumshida Khan, Digamber Singh , BDPO Punhana, Ajmat Khan JE, Arshad Hussain ADPO, Sanjay (petitioner) ADPO, Jafar Abbas Secretary, Arshad Hussain Assistant Accountant and Sahabuddin Assistant Accountant/Computer Operator had, in collusion with each other committed fraud and cheating. Without any construction/renovation being done on the aforesaid site, on the basis of fake and forged documents the officials had illegally embezzled public money of Rs.9,42,000/-. After the enquiry, the present FIR No.0249 dated 29.12.2022 under Sections 420, 467, 468, 471, 409 and 120-B was registered at Police Station Bichhor, District Nuh, Haryana and investigation was conducted by the local police.

3. The learned counsel for the petitioner contends that the petitioner was a contractual employee in the BDPO Office and working as a ABPO. The petitioner was not posted at the spot at the relevant time when the work started. In fact, he was posted only from 26.04.2021 till 05.07.2021. Therefore, since the work had been completed prior to his

joining, it cannot be held to be liable. Even otherwise, he had not signed any document and had no financial power being contractual employee.

4. On the other hand, the learned State counsel while referring to the reply dated 16.02.2023 by way of an affidavit of Shamsher Singh, HPS, Deputy Superintendent of Police, Puhana, District Nuh on behalf of the State has been by the learned State counsel. The same is taken on record. He contends that the petitioner-Sanjay Kumar was posted as ABPO at Block Puhana from 19.04.2021 to 04.07.2021. During the said period, muster-roll Nos.180 dated 20.04.2021 to 05.05.2021 for a sum of Rs.458640/- and 399 dated 08.05.2021 for an amount of Rs.32445/- were prepared under the supervision of the petitioner. The money had been withdrawn during the above-mentioned post of the petitioner and therefore, it could not be said that the petitioner was not liable for embezzlement of funds along with his co-accused. He contends that the custodial interrogation of the petitioner was certainly required for recovering an amount of Rs.1,17,750/- coming to his share from the fraud since a sum of Rs.9,42,000/- were shared by 8 named accused including the petitioner. As per the land records pertaining to the pond in question, it was revealed during investigation that the land was near Bag Wali Masjid, Village Bisru. The said land was under the ownership and possession of Mohammad Aayub son of Namruddin, statement under Section 161 Cr.P.C. stands recorded (Annexure R-4). As per record, this land in which the Johar (pond) had been made had not been given to the Panchayat and was not Panchayati land. Therefore, there was no

question of the renovation of the same using public money. In fact, during the course of inquiry, it was revealed that the persons who were job card-holders for the work purportedly to be done were not disbursed the amount as per their job cards and the money was sent to other account-holders who were connected to the various accused. The acts of omission and commission had been conducted by all the accused at different levels. Since the petitioner had criminal antecedents with two other cases registered against him i.e. FIR No.158 dated 01.08.2022 under Sections 420, 409, 406, 467, 468, 471, 120-B at Police Station Rozka Meo and FIR No.232 dated 24.11.2022 under Sections 406, 409, 420, 465, 467, 468, 471, 120-B of IPC at Police Station Bichor District Nuh (Mewat), he was not entitled to the grant of anticipatory bail because the custodial interrogation was certainly necessary to take the investigation to its logical conclusion.

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

6. As per the allegations levelled in the FIR, a sum of Rs.9,42,000/- has been embezzled on the pretext of the renovation of a pond purportedly in the use of the Panchayat. In fact, the pond was privately owned and secondly no work at all was done at the spot. The muster-roll and job cards have been forged and fabricated to show that work was actually done for the renovation of the pond. Money has been received in the accounts of those persons who were known to the accused and thereafter siphoned off. The affidavits of the Superintendent of Police, Nuh and Deputy Commissioner, Nuh which have been placed

on record today in the Court clearly establish the allegations that no renovation work was carried out at the pond near Bag Wali Masjid, Village Bisru under the MNREGA Scheme. On the contrary, a sum of Rs.9,42,000/- was disbursed in 04 installments out of the sanctioned amount of Rs.9,94,000/- by the BDPO, Punhana (co-accused) in relation to the renovation of the pond. So far as, the petitioner is concerned, he has two muster-rolls bearing Nos.180 and 399 were prepared during his time and money disbursed accordingly. Therefore, clearly, the allegations against the petitioner are extremely serious.

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 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 seriousness of the allegations as also the need to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required. Therefore, 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

03.03.2023
JITESH