

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

207

CRM-M-7226-2023

Date of decision : 18.04.2023

Shalender Kumar

Petitioner

V/S

State of Haryana

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. A.G., Haryana
for the respondent-State.

Mr. Raghav Sharma, Advocate
for the complainant.

ASHOK KUMAR VERMA, J. (ORAL)

1. The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.30 dated 30.01.2023 registered under Sections 406, 409 and 420 of the Indian Penal Code, 1860 at Police Station Madlauda, District Panipat.

2. Reply by way of an affidavit dated 28.03.2023 of Sh.Pardeep Kumar, Deputy Superintendent of Police, Crime Against Women, Panipat has been filed in the Court today which is taken on record.

3. Brief facts of the case are that the above-said FIR was registered on the basis of a letter received in Police Station Madlauda

from BDPO alleging that the inquiry was conducted by XEN Panchayati Raj, Panipat vide which it was found that the petitioner along with other co-accused have committed embezzlement of Rs.21,60,941/- in the various development works. A report dated 30.06.2022 was given to XEN, Panchayati Raj, Panipat in this regard.

4. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The petitioner remained the Sarpanch of village for the term 2016 to 24.02.2021. The petitioner has worked for the welfare of the village and carried out various development works like installation of RO Plant, Solar Plant, Bus Que Shelter, Welcome Gate, installation of lights, paving of roads, installation of water taps etc. Under the party friction of the village, the complaint has been moved by the opponent group against the petitioner and others. During inquiry, the petitioner has placed the material that the RO Plant and Solar Plant has been installed on the basis of the PWD (B&R) approved rates and other works have been carried out under the supervision of the SDO of the Panchayati Raj. There were 22 points in an enquiry levelled by the complainant. The Enquiry Officer without calling for the separate report of the concerned department has prima facie found some charge proved against the petitioner. The BDPO in utter violation of Section 53(2) of the Haryana Panchayati Raj Act without passing the order on the basis of the inquiry report, vide order dated 22.08.2022 has directed the petitioner to deposit the entire amount. The petitioner has also moved a representation submitting therein that the

development work may be inquired through the supervisory officer of the concerned Department and made a prayer to kept in abeyance the proceedings carried out merely on the basis of the inquiry report.

5. Learned counsel for the petitioner further submits that it is premature to lodge the FIR during the interregnum of the pending inquiry under the supervision of Head of the concerned department. The allegation of alleged financial irregularity is yet to be determined being subject matter of the proceedings under Section 53(2) of the Haryana Panchayati Raj Act. The petitioner has already invoked the jurisdiction of the Civil Court whereby under inquiry the department has been restrained from recovery of any impugned amount from the petitioner except in due course of law in case pending inquiry would conclude. The petitioner is already ready and willing to join the investigation. Therefore, the present petition may be allowed.

6. On the other hand learned State counsel assisted by learned counsel for the complainant has vehemently opposed the present petition in terms or reply dated 28.03.2023 filed by the State and submits that the petitioner along with other co-accused have committed embezzlement of Rs.21,60,941/- in the various development works. For through investigation of the case custodial interrogation of the petitioner is required.

7. Learned counsel for the complainant submits that the civil suit relied upon by learned counsel for the petitioner has already been dismissed in default.

8. Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. The petitioner being Sarpanch of village Khandra along with other co-accused embezzled the amount of Rs.21,60,941/-. The civil suit relied upon by learned counsel for the petitioner has already been dismissed in default.

9. As per reply filed by the State, the petitioner has neither prima facie case to file nor locus standi to maintain this petition because his no right is going to be infringed. There is no ground in favour of the petitioner to obtain the relief of pre-arrest bail and the entire investigation is still pending. The custodial interrogation of the petitioner is essential for recovery of the embezzled amount of Rs.21,60,941/- and further to know the other accused persons involved with him in this crime. He will not co-operate the police in case any relief of pre-arrest granted by this Court in favour of the petitioner.

10. Furthermore, the investigation is still going on and therefore, custodial interrogation of the petitioners is necessary for finding out the modus operandi of commission of the offence. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in ***State Vs.***

Anil Sharma : (1997) 7 SCC 187 held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a

case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

11. Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserves the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

18.04.2023

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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No