**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-10109-2023 (O&M)
Date of decision : 22.03.2023

Sumit Kumar .....Petitioner(s)

Versus

State of Haryana ..... Respondent(s)

CRM-M-10120-2023 (O&M)

Puneet Kumar .....Petitioner(s)

Versus

State of Haryana ..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Jaspreet Rai and Mr.Ajay Kalra, Advocates
for the petitioners

Mr.Dhruv Sihag, AAG, Haryana

Mr.Saurabh Arora, Advocate for the complainant

AMAN CHAUDHARY, J.

The present petitions have been filed under Section 438 Cr. P.C. for grant of pre-arrest bail to the petitioners in case FIR No.1215 dated 31.12.2022, registered under Sections 380 IPC at Police Station HTM Hisar, District Hisar.

Learned counsel contends that the petitioners have been implicated in the case on the basis of disclosure statement made by the main accused Krishan Soni, with whom their sister is married. Petitioner-Sumit Kumar is working as a Chartered Accountant in ELI Research India Pvt Ltd, earning Rs.24 lakhs per annum while petitioner-Puneet is an Advocate enrolled since 2018. It is on account of a call received from the police on the insistence of the main accused upon his arrest on 10.02.2023 that an altercation took place between the police officials and the petitioners, as they had told the investigating agency that their brother-in-law (Jija) has been falsely implicated and recourse shall be taken against the police officials for implicating them. There is also an improvement in the statement made by the complainant with regard to the number of articles stolen. A reference to para 5 of the status filed by the State in this regard has been made. Learned counsel submits that the petitioners are ready and willing to join the investigation as and when required by the investigating agency.

Learned State counsel assisted by learned counsel for the complainant submit that the submissions of learned counsel for the petitioners are contradictory inasmuch as on the one hand it is being stated that there is a false implication at the hands of main accused by assigning them specific roles in his disclosure statement whereas on the other hand, it is being contended that the police officials have implicated the petitioners on account of an alleged altercation that took place between them over the phone. Still further, he submits that there are specific allegations against the petitioners being part of the conspiracy and that the visit mentioned of the petitioners from Delhi to Hisar on 26.11.2022 by the main accused in his disclosure statement is confirmed from toll tax record and partial recovery has been effected from the main accused and the rest of it is yet to be recovered, being 40 tolas of gold, 2 diamond sets, 2,000/- American Dollars and Rs.1 lakh in cash. He makes a reference to paras 3, 4 and 13 of the status report filed by way of affidavit of Kaptan Singh, HPS, Deputy Superintendent of Police Law & Order, Hisar.

He submits that the custodial interrogation of the petitioners is necessary in the present case to find out the names of the other accused, if any and also their modus operandi. He further submits that there is a high probability of them fleeing from justice, in the eventuality of grant of anticipatory bail to them.

Heard the learned counsel for the parties.

It is apposite to make a reference to the paras relevant of the Status report, which read thus:-

> "3. That after registration of case, the investigation of this case is being carried out by ABVT Staff, Hisar. During course of investigation statements of witness Raj Kumar, Sweeper of the bank was recorded who stated that Krishan Soni was used to visit bank for repairing of lockers and bank Manager used to give master key of the lockers and other keys of the lockers to Krishan Soni. He further deposed that Krishan Soni has visited the bank on 16/17/18-11-2022. <u>During investigation it reveals that Krishan Soni co-accused visited the bank approximately 7/8 times prior to 16/17/18.11.2022.</u> Bank Manager deposited Rs. 10,500/- in his account for repair charges of the lockers for the paying the same to Krishan Soni. He after withdrawing the amount from his account, paid the same to Krishan Soni. Thereafter, on 10.2.2023, Krishan Soni was joined in the investigation and his disclosure statement was recorded in which he suffered that Bank Manager handed over master key and other keys of the lockers to him in the month of November, 2022. During the repair of locker, he opened locker No. 318 from which he committed theft all the golden/diamond ornaments from the locker. From the stolen ornaments, he kept half of the ornaments in his in

laws house in Delhi and remaining ornaments were kept in the house of his Sister namely Usha situated at Ludhiana. He was arrested in this case on 10.2.2023. He was produced before the Ld. Court of Illaqa Magistrate on 11.2.2023 and taken on 2 days police Remand. Section 120-B of IPC has been added in this case. As per till date investigation, there are four accused namely Bank Manager, Krishan Soni, Puneet Kumar and Sumit Kumar. Regarding their roles, it is submitted that the Bank Manager had handed over master key and other keys without adopting the bank norms to Krishan Soni and Krishan Soni had opened the locker on the pretext of repair and he committed theft of golden and diamond ornaments and cash etc. and handed over the to his relatives Puneet Kumar and Sumit Kumar. Regarding role of the Puneet Kumar and Sumit Kumar it is submitted that the they have suggested to co- accused Krishan Soni to commit theft for earning money. They came from Delhi to Hisar on 26.11.2022 in Boleno Car No. DL 8C AP 2990 and took the stolen golden ornaments and other articles from co- accused Krishan Soni with them. Some of the articles were returned by them to co-accused Krishan Soni whereas half of the jewellary as well as cash with them and the same are to be recovered from them.

4. That during interrogation he again recorded his disclosure statement on 11.2.2023, in which he suffered that all the stolen ornaments were taken by his brother- in- laws namely petitioner Sumit and Puneet sons of Ramesh Kumar r/o Tagore Garden Delhi but after one month he took half the ornaments with him which he kept in his house at Hisar. The keys of the lockers are also with him which he kept at his house. He further deposed that the remaining ornaments have been sold by his brother- in -laws petitioner Sumit and co- accused Puneet."

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13. ..Regarding evidence against the petitioner and co-accused Puneet Kumar, it is submitted that the investigating agency has collected record from the toll nakas of Madina (Rohtak) and Ramayan (Hisar situated at Hisar-Delhi Road. **As per roll record dated 26.11.2022, the petitioner Sumit Kumar and co-accused Puneet Kumar have visited Hisar in Car No.DL 8C AP 2990."**

The allegations that emerge from the FIR are that complainant-Asha Rani had opened an account and locker bearing No.318 in State Bank of India, Railway Road Branch, Hisar and kept her gold ornaments. On 30.12.2022, when she visited the bank for taking out some of the ornaments from the locker, she found all the said articles missing. During investigation in the FIR lodged by her, accused Krishan Soni, who is the brother-in-law (Jija) of the petitioners, was arrested. He in his disclosure statement stated that it were the petitioners, who had suggested him to commit the theft from the lockers. The factum of the visit of petitioners from Delhi to Hisar as stated by the above co-accused in his disclosure statement stands corroborated by the Toll Tax records collected during investigation.

Hon'ble The Supreme Court in **"Jai Parkash Singh vs. State of Bihar"** (2012) 4 SCC 379 has held thus:

> "6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record.
> 7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:
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> "438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:-
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> (i) The nature and gravity of the accusation;
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> (ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
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> (iii) the possibility of the applicant to flee from justice; and

> (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail."
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> 8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation.
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> 13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.
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> 21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required."

The case in hand involves serious allegations. The manner in which the crime has alleged to have been committed; the petitioners being clearly named by their close relative ascribing them specific role and that they all were hand in glove; contradiction with regard to the assertion of implication; during investigation visit of the petitioners to Hisar, as revealed by co-accused in the disclosure statement stands verified; the apprehension expressed by the State counsel of there being all the possibility of them fleeing from justice in the event of grant of anticipatory bail to them, as huge recovery is yet to be effected; the investigation is going on and their custodial interrogation is stated to be required to unearth the truth and modus operandi of the crime, thus, this Court, in the light of the judgment referred to hereinabove, is not inclined to grant concession of anticipatory bail to the petitioners. Accordingly, the present both the petitions being devoid of merits are dismissed.

Pending applications, if any, shall stand disposed of accordingly.

A photocopy of this judgment be placed on the file of the connected case.

22.03.2023 **(AMAN CHAUDHARY)**
gsv **JUDGE**

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