IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-10644-2023 (O&M)
Date of decision: 02.05.2023

NARESH KUMAR

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Fariad Singh Virk, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

Mr. P.S. Ahluwalia, Advocate
for the complainant

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AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case of FIR no.257 dated 20.12.2022, registered under Sections 420, 465, 467, 468, 471, 120-B IPC at Police Station Kotwali, Patiala, District Patiala.

2. The facts as emerge from the FIR registered on the statement of Jaibinder Singh son of Krishan Mahinder Singh, an NRI alongwith his brother residing in Canada, are that he and his family are owner in possession of the agricultural land measuring 98 Acre in village Suniaar Heri, Tehsil and District Patiala, his father, a patient of diabetes, is a senior citizen and unable to walk being handicapped due to amputation of his right foot. The allegations levelled are against their nephew and neighbourer Ravi Inder Singh, of having cheated them by hatching criminal conspiracy with accused-Harbans Singh, Naresh Kumar and Joginderpal etc. besides their other unknown companions and preparing forged agreement to sell of 55 acres of their land by preparing forged General Power

Attorney regarding which, an FIR No. 202, dated 15.07.2021, under Sections 420, 467, 468, 471, 120- B of IPC was got lodged. The above accused persons on the basis of forged documents created by affixing photographs of his father and other persons on their Aadhaar Cards and Pan Card in connivance with the employees of UCO Bank got opened forged account bearing No: 01030110064863, wherein neither any amount was deposited by the complainant and his family nor withdrawn. Ravi Inder Singh is the mastermind of this forgery and he with the conspiracy of his companions is used to do this sort of work and Naresh Kumar (petitioner herein) helps him prepare forged documents. They are involved in this racket and information has been received that huge money transaction has been made through this account and the Mobile No: 78892-30204 attached therewith. There are other FIRs also registered against the accused.

3. Learned counsel would contend that the petitioner has no concern with the fraudulent opening of the account in UCO Bank, which were the allegations levelled in FIR No.202 dated 15.07.2021, hence he is not an accused in that case. In the present case, the petitioner has been implicated based on disclosure statement of main accused-Harbans Singh Bhola. However, an application has been filed under Section 69 Cr.P.C. seeking discharge of said accused. Co-accused Anil Kumar, whose name had also surfaced based on disclosure statement of the main accused-Harbans Singh Bhola and was an accused in the initial FIR No.202 dated 15.07.2022, has been granted interim anticipatory bail by this Court. He is ready and willing to join the investigation.

4. Learned State counsel assisted by learned counsel for the complainant would submit that in the FIR No.202 dated 15.07.2021, the allegations levelled were of forging the General Power Attorney of the parents of the complainant

whereby an attempt was being made to grab 55 acres of their land and not with regard to opening of the bank account etc. The same came to light only when FIR No.1 dated 27.10.2021, though unrelated to the present complainant, was registered against co-accused Harbans Singh Bhola, and during its investigation, an ATM card of UCO Bank belonging to the complainant was recovered and upon an enquiry it was found that the said account was opened by the petitioner along with the co-accused Harbans Singh Bhola by forging Aadhar card, Pan card, account opening form etc. Therefore, allegations in FIR No.202 and FIR No.257 are different. Insofar as the submission of learned counsel seeking parity with co-accused Anil Kumar is concerned, it has been stated that he was not named in the FIR and was a loan agent, whereas, the petitioner was specifically named in the FIR, was working as a property dealer and is the henchman of the co-accused Harbans Singh Bhola, who had filed a discharge application but the same had not been accepted by the learned Magistrate. They submit that the custodial interrogation of the petitioner is extremely necessary as long as the investigation is in progress. Still further, the petitioner to his credit has 5 more FIRs, even though he was acquitted in two of them, one of which was based on compromise, and the remaining 3 are still pending, which are of similar offences. The apprehension of him fleeing from justice as also tampering with evidence and influencing witnesses cannot be ruled out.

5. Heard.

6. Learned State counsel had referred to para 5 of the status report to substantiate his submissions, which reads thus:-

> "That after registration of the above noted case, accused-Harbans Singh s/o Karnail Singh was arrested in the above noted case and during interrogation on 15-01-2023, vide Zimini

> No.05 accused Harbans Singh disclosed that he was running property dealing business. Due to work of property dealer, Naresh Kumar r/o Bishan Nagar District Patiala came in his contact, who was preparing fake documents for us. Joginder Pal Singh s/o Badri Parsad r/o Darshana Colony, Patiala was also his colleague, who has been expired, who was stamp vendor, from whom they used to get prepared fake documents. Only Palwinder Singh son of Gurdayal Singh, resident of village Chamaru Tehsil Rajpura District Patiala, knows that Jai Inder Singh's Aadhaar card and PAN card but by putting his photos, Palwinder Singh and his unknown friend opened a bank account at UCO Bank Chhoti Barandri Patiala. Anil Kumar, resident of Anand Nagar Extension near Tripuri Patiala, who provides private loans etc. was working at UCO Bank Chhoti Baradari Patiala, also conspired with them at UCO Bank Chhoti Baradari, Patiala, who in connivance with bank employees opened account in the name of Jai Inder Singh and his father Krishan Mahinder Singh prepared fake Aadhar card and PAN cards, photographs and open the account in the name of Palwinder Singh and another person, whom Palwinder Singh knows, Naresh Kumar had computerized from the said account number 01030110064863, one of which ATM card number 6082250103002134 was also issued to him. He was having money transaction with Palwinder Singh. When he used to ask for money from Palwinder Singh, then he used to give his ATM card and told him to withdraw money through this ATM card. Harbans Singh had kept the ATM card with him, but he was not aware about that Palwinder Singh had given Harbans Singh a fake ATM. He came about this only, when Case FIR No.01 dated 27-10-2021 under Sections 420, 465, 467, 468, 471, 120-B of IPC and 67 IT Act was registered at P.S. Crime Mohali and Harbans Singh was arrested in the said case and the ATM was taken into police possession by the Investigating Officer of Police Station State Crime Mohali."

7. It would be worthwhile to refer to the judgment of Hon'ble The Supreme Court in **Jai Parkash Singh vs. State of Bihar** (2012) 4 SCC 379, wherein while relying on the judgments in the cases of **D.K Ganesh Babu vs. P.T Manokaran** (2007) 4 SCC 434, **State of Maharashtra vs. Mohd. Sajid Husain Mohd. S. Husain**, (2008) 1 SCC 213, and **Union of India vs. Padam Narain Aggarwal** (2008) 13 SCC 305, it was 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:

"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 nonbailable 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:-

(i) The nature and gravity of the accusation;

(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;

(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."

xx xx xx

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."

8. The allegations levelled against the petitioner are grave in nature, of having conspired with other co-accused Harbans Singh Bhola and others to usurp the land worth crores of rupees belonging to the complainant and his family, by taking advantage of the fact that they were senior citizens and their children were residing abroad. With the above purpose in view, as alleged, firstly, a general power of attorney was forged, based on which the agreement to sell was fraudulently entered into and in order to misappropriate the amount involved therein, a bank account was opened by forging the documents. The scope of the present FIR is distinct from that of FIR No.202 dated 15.07.2021. The petitioner cannot draw any benefit from the order of grant of bail to the co-accused, as his vocation was of a loan agent, whereas the petitioner is stated to be a property dealer, specifically named in the present FIR, having been ascribed a specific role of preparing, while the name of above co-accused surfaced in a disclosure statement of accused-Harbans Singh Bhola. The investigation is stated to be at the nascent stage. The modus operandi of the petitioner and the co-accused is yet to be unearthed as also the truth is still to be unraveled. The apprehension of the petitioner fleeing from justice and tampering with the evidence as also influencing witnesses have been clearly expressed by the investigating agency. The petitioner is stated to be also involved in number of cases, with similar allegations.

9. In **P. Chidambaram vs. Directorate of Enforcement** (SC) 2019 (4) RCR (Criminal) 875 Hon'ble The Supreme Court has observed that, "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. 1973 is

an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

10. Considering the peculiar facts and circumstances of the case and bearing in mind the parameters laid down in the afore-referred judicial pronouncements, this Court is not inclined to grant the concession of anticipatory bail to the petitioner. Therefore, the present petition is dismissed.

11. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

May 02, 2023
M.Kamra

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