

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-11082-2023

Date of Decision:-25.05.2023

Juhardin.

.....Petitioner.

Vs.

State of Haryana.

.....Respondents.

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

Present:- Mr. Dharamvir Sharma, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.398 dated 02.08.2018 under Sections 420, 467, 468, 471, 201, 120-B IPC (Sections 120-B and 201 IPC have been added later on) registered at Police Station Dharuhera, District Rewari.

2. The brief facts of the case are that a complaint under Section 156(3) Cr.PC was filed by Saroj Kumar, Branch Manager, State Bank of India, Dharuhera (Rewari) against the petitioner under Sections 420, 467, 468, 471 IPC wherein it was stated that the petitioner had taken a loan of Rs.2,20,000/- of Kisan Credit Card Loan Scheme against a mortgage deed bearing Vasika No.20100009669 dated 24.12.2010 from the bank. By preparing a forged jamabandi and Khasra Girdawri/Khatauni the petitioner showed himself to be the owner of 4.47 hectares of land whereas as per the actual revenue record the petitioner was the owner of 3.59 hectares of land only. Therefore, by virtue of criminal conspiracy to take more loan from the bank, fake documents had been prepared including jamabandies, girdawries, writing deeds, fake certificates etc., purported to be issued by the Tehsildar.

Thereby, the petitioner had caused undue loss to the bank as after availing the loan the petitioner had not deposited back the amount with the bank.

Pursuant to the registration of the FIR the revenue records were taken into possession. Mohd. Habib, Jaffar Khan were arrested and released on regular bail.

As per the revenue record there were four owner of the said land not including the petitioner. However, the petitioner had shown himself to be the owner of the land by preparing fake fard jamabandis, Khasra Girdawri and fake report.

3. The Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. In fact he is an uneducated person and it appears that the employees of the bank have cheated the bank itself by creating fictitious documents of the petitioner. The instant FIR had been filed after a gap of 08 years as the money had been received from the bank in the year 2010 and the present FIR had been registered in the year 2018. As the co-accused of the petitioner had been granted the concession of regular bail, the petitioner was entitled to the concession of anticipatory bail as the report under Section 173(2) Cr.PC already stood submitted.

4. The Counsel for the State on the other hand contends that the petitioner is the main accused. Documents were fabricated by him to show that he was the owner of 4.47 hectares of land whereas as per the actual revenue record the share of the petitioner was 3.59 hectares of land only. On the basis of forged documents he obtained an amount of Rs.2,25,000/- which remains unpaid. Merely, because the co-accused of the petitioner had been granted the concession of regular bail did not entitle the petitioner to the grant of anticipatory bail as the offence was prima facie established and the custodial interrogation of the petitioner was necessary to take the investigation to its logical conclusion qua him.

5. I have heard the 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, the investigation has clearly revealed that the offence has been prima facie established against the petitioner. He had prepared forged documents to obtain a loan. Therefore, the serious nature of the allegations as also the need for custodial interrogation to take the investigation to its logical conclusion do not entitle the petitioner to the grant of anticipatory bail.

8. In view of the aforementioned discussion, no ground for the grant of anticipatory bail is made out and therefore this petition is dismissed.

(JASJIT SINGH BEDI)
JUDGE

May 25, 2023
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>