

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

103

CRM-M-11691-2023
Date of decision : 13.03.2023

Brij Lal

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Priyanshu Kumar, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in FIR No.220 dated 25.08.2022 registered under Sections 420 and 120-B of the Indian Penal Code, 1860 at Police Station City Malout, District Sri Muktsar Sahib.

The above-said FIR was registered on a written complaint made by Gursewak Singh alleging that his son Gurshaminder Singh is running a Nursery at Malout-Bathinda Road. One day when he was present at Nursery with his friend Bal Kishan, one Dharampal, who earlier knew his friend Bal Kishan, came there and told them that his brothers Brij Lal (the petitioner) and Tulsi Dass are running a company under the name and style of Green Star Marketing Corporation and they invite people to invest in their company and they return the double amount of the same in 200-250 days in installments. After 5/7 days they decided to go to Hanumangarh and met the petitioner and Tulsi Dass who told them that whoever invests in their company, they return

double amount of the same in 200-250 days in installments and they also showed pamphlet in this regard of their company. They also told that Nilin is also their partner and they have carved out a colony at Abohar Road under the name of Bala Ji Enclave and if they will invest Rs.10,00,000/- they will execute agreement to sell of 03 plots and if they will invest Rs.20,00,000/-, they will execute agreement to sell of 07 plots with them and after returning the money, the agreement will be cancelled. On which the complainant invested total amount of Rs.21,40,000/- in the company of the petitioner and other accused and he received total Rs.16,11,757/- from the accused but after November, 2019, the complainant did not receive any amount. When the complainant asked the accused to return his money, they flatly refused. When the complainant inquired about the plots, he came to know that accused have not got Government approval for carving out colony.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The petitioner has not committed any offence. The petitioner is neither partner of alleged Green Star Marketing Corporation nor owner or co-sharer of the alleged plots. The petitioner is not party or attesting witness of alleged agreement to sell dated 06.06.2019. In the FIR also it is clearly mentioned that out of total amount of Rs.21,40,000/- amount of Rs.16,11,757/- has already been returned to the complainant. The dispute is purely of civil nature which has been given a criminal colour. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is already ready

and willing to join the investigation.

Notice of motion.

On the asking of the Court, Mr. Joginder Pal Ratra, Senior D.A.G., Punjab, who is present in the Court, has accepted notice on behalf of the respondent-State and opposed the present petition on the grounds that the petitioner along with his co-accused has committed fraud with the complainant. The petitioner is also involved in 06 other cases of similar nature. For thorough investigation of the case and recovery of remaining amount custodial interrogation of the petitioner is required.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. The petitioner along with his co-accused has executed agreement to sell in favour of the complainant but later on, the complainant came to know that the accused have got no approval from the Government for carving out the colony. Pamphlets of the company and agreement to sell have been taken into police possession which prima facie corroborate the version of the complainant.

Moreover, the antecedents of the petitioner are also not good as he is already involved in 06 other cases of similar nature. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the

man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Furthermore, investigation is still going on in the present case. For thorough investigation of the case and for recovery of remaining amount, custodial interrogation of the petitioner is necessary. 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.”

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

13.03.2023

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(ASHOK KUMAR VERMA)
JUDGE

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