

CRM-M-14168-2022 (O & M)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14168-2022 (O & M)

Date of decision: 21.03.2023

Rajesh Kumar @ Raju

..... Petitioner

V/s

The State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. B.S. Sidhu, Sr. Advocate,
with Mr. Divij Datt, Advocate,
and Mr. Satveer Singh Badal, Advocate,
for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

Mr. Piyush Sharma, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.0026 dated 11.03.2022 under Sections 420 and 120-B IPC registered at Police Station Kot Ise Khan, District Moga.

2. The brief facts of the case are that the complainant-Hardeep Singh got recorded his statement with the police that he was working as a Purchase Manager at Bhagwati Lacto Vegetarian Export Private Limited, village Maana Singh Wala, Moga Road, Ferozpur. On 25.01.2022, their Firm had purchased 640 bags of rice for an amount of Rs.9,73,560/- from Kohinoor Rice and General Mills, Zira Road, Kot Ise Khan. Tanish Setia son of Rajesh Kumar was the commission agent. On 07.02.2022, Tanish Setia had arranged a truck bearing No.PB07-AC-4525 from Rajesh Kumar

CRM-M-14168-2022 (O & M)

::2::

23203-2022), owners of New Best Punjab Transport Company. On 08.02.2022, the rice was loaded in the said truck from Kohinoor Rice and General Mills, Zira Road, Kot Ise Khan and was dispatched to G.S.Infraport Private Limited Kandla (Gujarat). A sum of Rs.20,000/- was given in cash to the driver of the truck in advance by Amandeep Singh, the accountant of Kohinoor Rice and General Mills. However, the truck did not reach the godown at G.S. Infraport Private Limited, Kandla (Gujarat) and the mobile numbers of the driver were switched off. The owners of the transport company were also not disclosing any facts. Thus, a fraud had been played upon them (complainant).

During the course of investigation of the case, it was found that one Uma Shanker son of Bely Ram, resident of village Pandori Beet, P.S. Garh Shanker was the registered owner of a truck No.PB07AC-4525. On 21.07.2022, the statement of the said Uma Shankar was recorded in which he disclosed that the above said truck was at Jammu from 07.02.2022 to 09.02.2022 and on 11.02.2022, the said truck was loaded at Amritsar. Someone had illegally used the registration number of his truck in the present occurrence. From his statement, the provisions of Section 465/467/468 IPC were added in the present case vide DDR No.20 dated 25.07.2022.

3. The learned counsel for the petitioner contends that the only allegation against the petitioner is that the sheller owner booked the truck through a broker from the transport company owned by the petitioner and one Satpal Singh and the goods had not reached its destination. In fact, the petitioner himself had verified the registration number and the driving licence of the driver of the vehicle which were found to be correct. The

CRM-M-14168-2022 (O & M)

::3::

sheller owner had also verified the said details. The petitioner himself was a victim because of which he alongwith Satpal Singh had also moved a complaint dated 19.02.2022 with the SHO, Police Station City, Sri Muktsar Sahib with respect to the truck in question. As per the said complaint, Satpal Singh/co-accused was in regular contact with the owner and driver of the truck, namely, Raj Kumar, who had spoken to him (petitioner) on a number of occasions. He contends that a purely civil dispute has been given the colour of a criminal offence. In addition, it is his contention that under the provisions of the Carriage By Road Act, 2007, there was no liability of the petitioner. Since the petitioner had joined the investigation, he was entitled to the grant of anticipatory bail.

4. The learned counsel for the State, on the other hand, while referring to the reply dated 17.02.2023 contends that the truck in question had affixed upon it a number which was registered to another truck in the ownership of Uma Shankar. Though the petitioner had joined the investigation, he had furnished absolutely no information whatsoever regarding the whereabouts of the driver and/or owner of the vehicle. As per their investigation, Raj Kumar who was stated to be the owner of the vehicle is a fictitious person set-up by the accused so as to mislead the complainant and the investigating agency. Therefore, as there was complete non-cooperation with the investigation, the petitioner was not entitled to the grant of anticipatory bail as custodial interrogation was required to take the investigation to the logical conclusion.

5. The learned counsel for the complainant has submitted that the entire rice has been defalcated. The petitioner has been on interim bail for the last one year but has provided no details of the driver and the owner of

CRM-M-14168-2022 (O & M)

::4::

the vehicle. It appears that the petitioner along with his co-accused themselves have committed the offence as Raj Kumar, the alleged owner/driver is a fictitious person. He, therefore, contends that the serious nature of the allegations did not entitle the petitioner to the grant of bail.

6. I have heard the learned counsel for the parties.

7. Admittedly, the petitioner has joined the investigation but has not co-operated with the same. The allegations levelled against the petitioner and his co-accused are quite specific. It was they who had sourced the vehicle at the instance of broker-Tanish Setia for the purposes of transport of rice to Gujarat. The truck bearing No.PB07-AC-4525 was, in fact, owned by one Uma Shankar son of Bely Ram and the same number has been affixed upon the vehicle/truck used to transport the rice. The purported driver/owner of the truck, namely, Raj Kumar appears to be a fictitious person set-up by the accused to mislead the complainant and the prosecution. Therefore, the custodial interrogation of the petitioner is certainly required to take the investigation to its logical conclusion.

8. Additionally, the Hon'ble Supreme Court in the case of ***'Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977'*** 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

CRM-M-14168-2022 (O & M)

::5::

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***

CRM-M-14168-2022 (O & M)

::6::

interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

9. Keeping in view the fact that the allegations against the petitioner are serious and his custodial interrogation is necessary to take the investigation to its logical conclusion, I find no merit in the present petition. The same is, therefore, dismissed.

(JASJIT SINGH BEDI)
JUDGE

March 21, 2023
sukhpreet

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