IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16844-2021 (O & M)
Date of decision:16.08.2023

Bal Kishan …... Petitioner

V/s

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Jasvir Singh Dhaliwal, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Nirmaljeet Singh Sidhu, Advocate,
for the complainant.

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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.22 dated 02.02.2021 under Sections 420, 120-B IPC registered at Police Station Canal Colony Bathinda, District Bathinda.

2. The present FIR came to be registered on an application dated 28.09.2020 moved by the complainant-Naresh Kumar who stated that in the year 2013, he had come in contract with Vironika, wife of Bal Krishan @ Bal Kishan (petitioner). She told him (complainant) that her husband Bal Krishan @ Bal Kishan was working with Megafine company at Bathinda and if money was invested with the said company, a huge profit could be made. Based on the offer given by her and her husband-Bal Krishan, he (complainant) had given a sum of Rs.20 lacs including some amount by way of bank transactions. 09 cheques were also given to him (complainant) on

account of profit. He had deposited two cheques which came to be dishonoured. When he (complainant) approached the accused, then on 03.11.2014, they (accused) executed an agreement to sell off their house in his (complainant's) favour. However, they did not get the sale deed executed and instead, Bal Krishan alongwith his friend Baljinder Singh @ Vicky came and gave him (complainant) Rs.1,60,000/-. Both Bal Krishan and his wife-Vironika told him that the house was mortgaged with the bank and they would clear the loan and execute the sale deed. Later on, he (complainant) came to know that the Bank had seized the house in question and that the accused had cheated many people through Max Frax Company and Kanny Company. He (complainant) had suffered a heart attack on account of the conduct of the petitioner and his wife. When the complainant asked the accused for money for medical purposes, they declined to pay anything. Thus, the accused including the petitioner had cheated him.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case as the occurrence pertains to the year 2013-14 whereas the complaint leading to the registration of the present FIR came to be filed in November 2020. Taking the allegations to be true, it was a case of a civil dispute at best, for which, the complainant was at liberty to file a civil suit for recovery. Despite having 09 cheques in his possession, only 02 came to be dishonoured but no complaint under Section 138 of the N.I. Act had been filed. The petitioner had never entered into an agreement to sell dated 03.11.2014 with respect to the house in question and the document was a forged and fabricated one. Even otherwise, the petitioner had joined investigation and co-operated with

the same. Therefore, no case for his custodial interrogation was made out and he was entitled to the concession of anticipatory bail.

4. The learned counsel for the State while referring to the reply dated 27.07.2021 filed by way of an affidavit of Gurdev Singh, PPS, Deputy Superintendent of Police (Economic Offence & Cyber Crime), contends that a sum of Rs. 20 lacs had been given by the complainant to the petitioner and his wife with a view to get a handsome amount as a return. 09 cheques had been issued in favour of the complainant on different dates purporting to be profit for the invested amount. However, two cheques that had been presented came to be dishonoured. Thereafter, a sum of Rs.1,60,000/- was returned and an agreement dated 03.11.2014 had been entered into between the petitioner and his wife on the one hand and the complainant on the other with the assurance that the house in question would be transferred in the name of the complainant in lieu of the Rs.20 lacs received by the accused. However, it transpired that the property had been the subject-matter of a mortgage and the same had been taken over by the bank. He, therefore, contends that the sequence of events *prima facie* establish the commission of an offence and it is apparent that the petitioner had a dishonest intention at the very inception to cheat the complainant. He, thus, contends that the petitioner was not entitled to the grant of anticipatory bail. Reliance is placed on the judgment in ***'Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977'.***

5. The learned counsel for the complainant also submits that the offence is well-established. The delay in filing of the complaint which, subsequently, led to the registration of the FIR was only on account of the fact that the petitioner and his wife repeatedly represented to the

complainant that they would repay the amount of Rs.20 lacs received by them. Therefore, no proceedings under Section 138 N.I. Act were initiated nor was any civil suit for recovery filed. Even otherwise, the complainant had suffered a heart attack because of which he was unable to pursue his legal remedies in accordance with the law within a reasonable time-frame. He, however, states that the sequence as enumerated in the FIR clearly establishes the offence in question, and therefore, merely because the petitioner had joined investigation, did not entitle him to the grant of anticipatory bail.

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

7. 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 Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.*
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> *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***.”

8. In the instant case, it is apparent that, firstly, the petitioner and his wife misled the complainant to part with a sum of Rs.20 lacs. 09

cheques were given to the complainant purported to be interest on the invested amount. Two of the cheques came to be dishonoured. Thereafter, a sum of Rs.1,60,000/- was given and an agreement to sell was executed to sell their house to the complainant to repay the debt. However, it transpired that the said house was mortgaged and was, subsequently, taken over by the bank. Thus, the sequence of events *prima facie* establish that the petitioner-Bal Krishan @ Bal Kishan and his wife-Vironika have committed the offence in question. Merely because the petitioner had joined investigation does not entitle him to the grant of anticipatory bail in view of the judgment in ***'Sumitha Pradeep (supra)'.***

9. In view of the above, I do not find any merit in the present petition and the same stands dismissed.

10. It is, however, made clear that no opinion has been expressed on the merits of the case and the observations made in the present order are only for the purpose of adjudication of this case. The Trial Court is free to decide the matter in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

August 16, 2023
sukhpreet

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