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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-15190-2022

Date of decision :05.09.2023

AMIT KUMAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Deepak Vashishth, Advocate
for the petitioner.

Mr. Rajiv Goel, DAG, Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.12 dated 13.01.2022 registered under Section 409 IPC, 1860 at Police Alewa, District Jind.

2. The instant FIR came to be registered on the complaint of the BDPO, Alewa who sent a letter No.3200 dated 13.01.2022 to the Investigating Agency. As per the allegations, against Ex. Sarpanch Amit Kumar (petitioner), Gram Panchayat, Thua whom an amount of Rs.8,98,082/- of material under HRDF Scheme was pending and cash in hand amount of Rs.98,557/- cash in hand total amount of Rs.9,96,639/- and 15th Financial Commission PRI Scheme and an amount of Rs.11,62,127/- was pending. Along with this, cash in hand amounting to Rs.96,341/- was also pending under the Panchayat Funds Scheme which was got deposited by the Sarpanch. Thus, Ex.Sarpanch Amit Kumar,

Gram Panchayat, Thua was having an outstanding amount of Rs.9,96,639/- of HRDF Scheme and 15th Financial Commission PRI Scheme amounting to Rs.11,62,127/- and total amount of Rs.21,58,766/- was outstanding. Similarly, Smt. Sharmila Devi, Ex. Sarpanch, Gram Panchayat, Naguran Nimbran was also having an outstanding amount of Rs.1,18,545.75 of 15th Financial Commission PRI Scheme and Rs.12,943/- of Gram Panchayat Fund cash in hand which total amounted to Rs.1,31,488.75 which was pending. So the Ex. Sarpanches namely, Amit Kumar (petitioner), Gram Panchayat, Thua and Ex. Sarpanch Sharmila Devi, Gram Panchayat Naguran Nimbran were having the above-mentioned outstanding amounts which had not been deposited and for embezzlement of the amounts and causing economic loss to the above-mentioned Gram Panchayats. Legal action was sought.

After the registration of the FIR, during the course of investigation, Rohtash, Social Education Panchayat Officer was joined in investigation and his statement was recorded under Section 161 Cr.P.C. The record pertaining to Village Thua was taken into possession after which his supplementary statement was recorded.

On 26.04.2022, the complainant-BDPO, Alewa informed that Ex. Sarpanch Sharmila Devi, Gram Panchayat Naguran Nimbran had deposited the amount of cash in hand and cost of articles laying with her along with interest @ 21% P.A.

During investigation of the case, relevant records were sought from the office of the complainant according to which assessments of three works i.e. construction of 1 LPB street from house

of Tek Ram to Ramsar Pond, Construction of 1 LPB street from house of Tek Ram to SC Chopal and Construction of Puliya and lying of pipe at various places, completed under HRDF and Financial Commission PRI Scheme were not proper as per the records.

3. The learned counsel for the petitioner contends that when notices had been issued to him by the BDPO, Alewa, he had responded by providing details of the work done and amounts spent by the Gram Panchayat for the development works. In fact, the allegedly embezzled amount were Gram Panchayat funds to be used for the development works of the Village and the petitioner being a Sarpanch at the time had executed many development works for which the above-mentioned amount had been spent. The work had been done under the supervision of the Secretary and J.E. of the Panchayati Raj Department. In fact, a measurement book had been prepared and deposited with the concerned SDO who did not sign the same due to which the bills were still pending. Therefore, no amount had been embezzled or unaccounted for and it was only due to pendency of the bills that the amount was not shown in the record. As the petitioner had joined investigation and cooperated with the same, he was entitled to the concession of anticipatory bail.

4. On the other hand, the learned State counsel while referring to the affidavits dated 19.05.2022 of Mr. Jitender Singh, DSP, Headquarters Jind, 09.09.2022 of Mr. Nar Singh, DSP, Jind-Uchana, District Jind and 07.08.2023 of Mr. Gulzar Malik, Sub Divisional Magistrate, Uchana, District Jind contends that the allegations against

the petitioner were grave as being a Sarpanch, he had misappropriated Government funds to the extent of Rs.21,58,766/-. He had been asked to deposit the embezzled amount under the relevant provisions of the Haryana Panchayati Raj Act but had not done so till date. He contends that a detailed inquiry had been conducted by the SDM, Uchana, District Jind which was submitted to the DC, Jind as per which it has been found that for the work allegedly got done by the petitioner, no administrative approvals/resolution had been passed by the Gram Panchayat, Thua. It was also found that the MB Nos.1628 and 1654 had been signed by the J.E. but the signatures of the SDO (PR) were not found there and the MB No.1628 for the construction of a Pulliya were not investigated and verified by the concerned SDO (PR). He, therefore, contends that in order to defalcate public money, the petitioner allegedly initiated the work of repairs/construction without the necessary approval and even the said repairs/construction had not been carried out and the measurement books had been fabricated to show that some work had been at the spot. Therefore, the allegations as levelled against the petitioner were grave and he did not deserve the concession of anticipatory bail.

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 Live Law (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, a perusal of the FIR and the affidavits dated 19.05.2022, 09.09.2022 and 07.08.2023 would clearly establish that the works purportedly initiated at the instance of the petitioner were done so without administrative approval/resolution. The measurement books had not been counter-signed by senior officers but only by the J.E. concerned. It appears that the work was initiated to defalcate public money in consonance with some officials who's roles need to be investigated in detail. The custodial interrogation of the petitioner is certainly necessary to not only ascertain the role of others but also to take the investigation to the logical conclusion. Even otherwise, as the offence is *prima facie* established against the petitioner from the investigation conducted so far, he is not entitled to the concession of anticipatory bail moreso when he has refused to deposit the defalcated amount.

8. In view of the above, I find no merit in the present petition. Therefore, the same is dismissed.

9. However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

05.09.2023
JITESH