

CRM-M-15877-2023

-1-

214

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-15877-2023

Date of decision : 18.05.2023

SANJAY

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sarfraj Gill, Advocate for
Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., 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.340 dated 23.12.2022 registered under Sections 406, 420, 467, 468, 471 and 120-B of IPC at Police Station Dadri City, District Charkhi Dadri.

2. The present FIR came to be registered at the instance of Dinesh Sharma son of Suresh Sharma who stated that he used to work in a private newspaper at Dadri. In the beginning of 2020, he met Manoj Phogat son of Surat Singh who was posted as an SPO at Charkhi Dadri, Police Department. The said Manoj Phogat informed him (complainant) that he could get the recruitment done in different departments by taking money and showed him (complainant) the joining letter of his (Manoj Phogat's) son Aniket. He stated that he could also get people employed

CRM-M-15877-2023**-2-**

to the post of Clerk and Peon at the Panjab University. On this, he (complainant) got him (Manoj Phogat) to meet his (complainant's) nephew Ravi son of Ashok, Rahul son of Umeed and Lalit Kumar. Manoj Phogat informed him (complainant) that his (Manoj Phogat's) brother, Sanjay Phogat alias Gandhi (petitioner) was also a party to these acts of recruitment. A sum of Rs.4,00,000/- was deposited in the joint account of Manoj Phogat and his wife Shilavati. Rs.1,00,000/- was given through a mobile App. and a cheque of Rs.1,50,000/- was given. The rest of the money was given to the petitioner in the presence of Sunil son of Bhagwan Singh. Then after some time, appointment letters of Clerk and Peon of the Panjab University were handed over to his (complainant's) nephew Rahul and Ravi. But no letter from the Urban Department was given to Lalit Kumar. Thereafter, all of them (complainant party/accused) went to Panjab University where one Dev was introduced to him (complainant). However, his (complainant's) relatives were not invited to join Panjab University in any capacity. When they (relatives of the complainant) approached Panjab University, they came to know that there was no such recruitment which had taken place and the letters which had been provided by the accused were fake. An attempt was to contact Manoj Phogat but his phone was switched off. His (complainant's) children repeatedly visited the house of Manoj Phogat and his brother Sanjay Phogat alias Gandhi (petitioner). They found that many other children used to come and visit the said accused and demanded their money. The names of those children were Ronak of

Village Atela, Firoz of Village Atela, Sonu of Village Atela, Ravi of Village Atela, Vinod of Village Pantawas Kalan, Mukesh of Village Paitawas Kalan, Sunil of Village Imlotha, Manjit of Village Misri, Ajit of Village Charkhi Dadri. No child had been recruited despite receipt of money by the accused including the petitioner. Meanwhile, Manoj Phogat, SPO and Sanjay Phogat alias Gandhi (petitioner) absconded from their house and it subsequently transpired that a sum of Rs.5 crores had been taken by them on this pretext of providing jobs. An application was made to CID, Jhajjar and it was found that the petitioner had given cheques to 7/8 children by affixing fake signatures of Sanjay Phogat (petitioner) and Manoj Phogat and their Operator Sunil son of Bhagwan Singh. Thus, he (complainant) along with others had been cheated.

3. When this matter had come up for hearing on 20.04.2023, as the Court was not inclined to grant the concession of anticipatory bail to the petitioner, the learned counsel for the petitioner sought time to obtain instructions as to whether the petitioner and his co-accused were willing to effect a settlement with the aggrieved persons. However, no such offer has come forth and therefore, the case is being heard on merits.

4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The liability if any was of Manoj Phogat and not of the petitioner. As the applicant had not received any money from the first informant or any other person, no case for custodial interrogation was made out. Certain dates had been

mentioned on which dates various amounts had been handed over to the petitioner. However, it is his contention that on those dates, the petitioner was admitted at a hospital and therefore, the commission of the offence was a physical impossibility. He therefore, contends that as the main accused is his brother Manoj Phogat and no specific allegations have been levelled against the petitioner, he was entitled to the concession of anticipatory bail.

5. On the other hand, the learned State counsel contends that a perusal of the FIR would reveal that specific allegations have been levelled not only against Manoj Phogat but also against his brother Sanjay Phogat alias Gandhi (petitioner). The petitioner and his co-accused have received sum of Rs.8,00,000/- from the complainant on the pretext of providing jobs to Ravi, Rahul and Lalit Kumar in various departments. In fact, during the course of investigation, it transpired that the petitioner and his brother had cheated 13 other persons whose statements have been recorded and relevant record in this regard had been taken into possession. The bank account details of the petitioner and his co-accused Manoj Phogat have also been obtained and it has been found that the petitioner and his brother Manoj Phogat allured the complainant along with other persons to fill online forms of various jobs at Cyber Cafes and assured them to provide jobs in the Railways Department, Chandigarh University, Territorial Army, Jat Regiment etc. and obtained money for the said purpose. Later on, it was found that no such recruitment was to take place in any of these departments

CRM-M-15877-2023

-5-

/organizations. The statement of a victim Ronak son of Rambir has been specifically recorded to the effect that a sum of Rs.4,00,000/- had been to the petitioner on 15.12.2019 at Triveni Cafe at Charkhi Dadri for providing a job in the Territorial Army and the petitioner had handed over a cheque of the same amount from his personal account. During investigation, it has been found that the signatures of the petitioner on the said cheque were fake. He contends that the entire fraud amounts to Rs.5 crores. Therefore, as the allegations were serious and a number of youth had been deceived by the petitioner and his co-accused, the offence was *prima facie* established and therefore, the petitioner was not entitled to the grant of anticipatory bail. Even otherwise, the custodial interrogation of the petitioner was required in order to recover the money as well as to take the investigation to its logical conclusion.

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 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.

8. In the instant case, there are specific allegations against the petitioner and his brother Manoj Phogat of having duped not only the complainant and his family members of Rs.8,00,000/- but as many as 13 other persons. The total amount received from 13 aggrieved persons to provide various jobs to them is approximately Rs.5 crores. The investigation has *prima facie* established the culpability of the petitioner and his co-accused. Further, the custodial interrogation of the petitioner is required for the purposes of recoveries and to take the investigation to its logical conclusion.

9. In view of the aforementioned discussion, I find no merit in the present petition and the same is dismissed.

10. 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

18.05.2023
JITESH