

CRM-M-20609-2022

2023:PHHC:041475

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

CRM-M-20609-2022

Date of decision : 21.03.2023

SATISH KUMAR

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Isha Goyal, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

Ms. Manjari Joshi, Advocate
for the complainant.

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.09 dated 19.01.2020 registered under Sections 406, 420, 120-B IPC at Police Station Dhakoli, District SAS Nagar.

2. The brief facts of the case are that in the year 2015, Satish Kumar (petitioner) had incorporated a firm in the name and style of S.K. Enterprises and had obtained a cash credit limit of Rs.10 lakhs for purchasing stocks and the stock which was to be purchased was to be mortgaged with the Bank. However, the petitioner after obtaining the

credit limit, closed the aforementioned firm without informing the bank and sold the stock which was mortgaged and misappropriated the bank money thereby committing the offences in question.

A complaint with the aforementioned allegations was made to the Judicial Magistrate, 1st Class, Derabassi and pursuant to the order dated 03.12.2019 under Section 156(3) Cr.P.C., the instant FIR No.09 dated 19.01.2020 under Sections 406, 420, 120-B IPC at Police Station Dhakoli, District SAS Nagar came to be registered.

3. The learned counsel for the petitioner contends that a sum of Rs.4 lakhs already stands paid to the Bank and the Bank had already approached the DRT for the recovery of its outstanding dues. The order under Section 156(3) Cr.P.C. had been passed by misleading the Magistrate. Since the matter was pending before the DRT regarding the proceedings qua the loan in question, the petitioner was entitled to the grant of anticipatory bail.

4. On the other hand, the learned State counsel while referring to the reply dated 05.08.2022, contends that offences of this kind involving defalcation of public funds is on the rise. The investigation has clearly revealed that the petitioner had closed his firm and had sold the stock which had been mortgaged with the bank after which the sale proceeds had been misappropriated. Therefore, the offence was clearly established and the nature of the allegations did not entitle the petitioner to the grant of bail.

5. The learned counsel for the complainant-Bank contends that vide order dated 15.11.2022, counsel for the petitioner had stated that the petitioner wished to make the entire payment due to the bank. For the said purpose, the matter was referred to the Mediation and Conciliation Centre of this Court to explore the possibilities of a settlement. However, no settlement came to be effected. Apparently, not only was the offence clearly established but the conduct of the petitioner as also the nature of the allegations did not entitle him to the grant of anticipatory bail.

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

7. In the instant case, the allegations against the petitioner are that after availing a cash credit limit of Rs.10 lakhs for purchasing stocks, the said stocks which were mortgaged with the Bank have been sold and the amount in question misappropriated. Though, proceedings for recovery of the amount are pending before the DRT, that by itself would not entitle the petitioner to the grant of anticipatory bail. It may be relevant to mention here that offences of this kind are on the rise where huge loan facilities are availed after which the amount is defalcated in one way or the other. Thereafter, the concession of bail is sought on account of the fact that civil proceedings were pending either before the DRT or other forums. Interestingly, when the Court was not inclined to grant bail, a statement was made on behalf of the petitioner that he wishes to pay all the dues to the Bank. However, the petitioner has reneged on his undertaking.

8. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) R.C.R. (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.

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.

9. In the present case, the allegations are serious. Firstly, the amount has been defalcated by the petitioner. Thereafter, despite making a categorical averment in Court that he wished to make the payment of all dues to the Bank, no amount is forthcoming. Therefore, the conduct of the petitioner also leaves a lot to be desired. The judgment of the Hon'ble Supreme Court in the case of **Udho Thakur & another Versus The State of Jharkhand & another, 2022(4) Crimes 354,** cited by the petitioner is not applicable to the facts of the present case because when the petitioner was granted the concession of interim bail vide order dated 13.05.2022, no such condition was imposed of depositing of any amount

as a condition precedent for staying of his arrest. Therefore, I find no merit in the present petition and the same is hereby 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

21.03.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No