

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-21639-2022
Date of decision :06.02.2023

AMARJIT SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Shreesh Kakkar, Advocate for
Mr. Vishal Thakur, Advocate
for the petitioner.

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

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.176 dated 20.11.2021 registered under Sections 409, 467, 468, 471 of IPC, 1860 at Police Station Dakha, District Ludhiana (Rural).

2. The brief facts of the case are that the Assistant Registrar, Cooperative Societies, Jagraon wrote a letter No.1311 dated 20.07.2021 to the Deputy Commissioner, Ludhiana stating that the members of the Talwandi Kalan Multipurpose Agricultural Cooperative Society Ltd. had passed a Resolution dated 24.12.2020 with the recommendation for the registration of an FIR against Amarjit Singh (petitioner), suspended Secretary of the Talwandi Kalan Multipurpose Agricultural Cooperative Society Ltd. for not having made necessary entries in the record after receiving an amount from its members and for making advance payments to the members for fertilizer after forging the signatures on the cheques and committing fraud while distributing the fertilizer to the

members of the society. In this way, he had committed a fraud of Rs.31,71,257/-. The Assistant Registrar Cooperative Societies, Jagraon had requested the Deputy Commissioner, Ludhiana to recommend this case for the registration of an FIR against Amarjit Singh (petitioner).

The aforementioned letter along with enclosed documents was forwarded to the Senior Superintendent of Police, Ludhiana (Rural) by the Deputy Commissioner, Ludhiana vide letter No.9728/PB dated 08.09.2021 for legal action. The inquiry was marked to the Deputy Superintendent of Police, Dakha by the Senior Superintendent of Police, Ludhiana (Rural). The Deputy Superintendent of Police, Dakha marked the same, S.H.O. Police Station, Dakha for necessary action who further marked the same to ASI Pritam Masih for necessary action.

ASI Pritam Masih conducted the enquiry. During the course of the same, he recorded the statements of Surjit Singh, Chowkidar and Darshan Singh, Sarpanch of Village Talwandi Khurd. These persons stated that the petitioner had committed fraud with the people and the society and was absent from duty. He (ASI Pritam Masih) had sent summons to the petitioner to join enquiry proceedings on three occasions i.e. on 13.10.2021, 15.10.2021 and 17.10.2021 but the petitioner was not found available at his house which was found locked. Therefore, Amarjit Singh did not join inquiry proceedings. The Enquiry Officer concluded that Amarjit Singh, Secretary (petitioner) had signed forged signatures on the cheques of the members of the Society and showed advance delivery of fertilizers to the members, thereby committing fraud in the distribution of fertilizer and also committed

fraud with 35 members of the Society. The defalcated amount was stated to be Rs.31,71,257/- and the Inquiry Officer recommended that an FIR under Sections 409, 467, 468, 471 of IPC was to be registered against the petitioner as per his Enquiry Report dated 26.10.2021.

The S.H.O. Police Station, Dakha agreed with the aforementioned report. In addition, the Deputy Superintendent of Police, Dakha also recorded statements of Yashpal Singh, Audit Inspector and Sonia Saini, Audit Inspector of the Cooperative Department. Thereafter, Deputy Superintendent of Police, Dakha recommended registration of an FIR against the petitioner vide his report dated 17.11.2021. The Senior Superintendent of Police, Ludhiana (Rural) approved the Enquiry Report and passed order dated 19.11.2021 for the registration of the FIR against the petitioner. In compliance of the aforementioned orders, the FIR No.176 dated 20.11.2021 came to be registered against the petitioner.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. No offence has been made out against him. None of the 35 members of the Society have raised any allegations against the petitioner. In fact, the petitioner had maintained the accounts properly. Since he had joined the investigation in terms of the order dated 19.05.2022 passed by this Court, his custodial interrogation was not required as he had cooperated with the Investigating Agency.

4. A reply dated 31.10.2022 by way of an affidavit of Jasbinder Singh, PPS, Deputy Superintendent of Police, Dakha had been filed on behalf of the State by the learned counsel for the State,

which is already on record. He contends that the petitioner has defalcated a huge amount. Though, he has joined investigation, no recovery has been effected from the petitioner. The custodial interrogation of the petitioner is required not only on account of the seriousness of the offence but also to take the investigation to its logical conclusion. He, thus prays that the present petition for the grant of anticipatory bail be dismissed.

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

6. In the present case, undoubtedly, the petitioner has joined the investigation. However, a perusal of the facts as enumerated hereinabove *prima facie* establish the commission of an offence. Merely because the petitioner has joined investigation and his custodial interrogation is not required would not be a ground enough to grant him the concession of anticipatory of bail.

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 view of the above, as the offence is *prima facie* established, the petitioner does not deserve the concession of pre-arrest bail. Even otherwise, the investigation has to be taken to its logical conclusion and therefore, the custodial interrogation is certainly required. Therefore, I find no merit in the present petition and the same is hereby 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

06.02.2023
JITESH