

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-21916-2022

Date of Decision:-05.12.2023

Savita Jain.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. H.S. Oberoi, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

Mr. Abhishek Sharma, Advocate for
Mr. Vishal Gupta, Advocate for the Complainant.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.0044 dated 25.03.2022 under Sections 406 and 420 IPC registered at Police Station Division No.8, Ludhiana, District Ludhiana.

2. The present FIR came to be registered on the statement of CA Sanjay Sood who stated that a company by the name of M/s IGOPL Offshore Pvt. Ltd. which was his client was in need of funds. Mrs. Savita Jain (petitioner) approached him (complainant) stating that she could procure Rs.20 crores for the Company for a fee of Rs.20 lacs and an MOU in that regard was entered into. Thereafter, the agreement of mortgage was also entered into by way of security and an undated PDC for Rs.20 lacs was received by him (complainant). However, the funds were not arranged and the accused kept on extending the time stating that she would get the work done. However, when the work was not done, she agreed to pay Rs.22 lacs in two installments for which two separate cheques for Rs.15 lacs and Rs.7 lacs were issued. However, the same came to be dishonoured twice over.

She sought more time to refund an amount of Rs.20 lacs but did not do so. Yet another cheque of Rs.5 lacs was issued which came to be dishonoured. Thus it was apparent that she had committed the offences in question.

3. The Counsel for the petitioner contends that no offence under Sections 406 and 420 IPC was made out against the petitioner. The dispute was of a civil nature as there were monetary transactions between the parties. For the dishonouring of the cheques the appropriate remedy was to file a complaint under Section 138 of the Negotiable Instruments Act. As the complainant was a Chartered Accountant it would not lie in his mouth to allege that he was allured by the petitioner for the purposes of a loan. The proceedings under Section 138 of the Negotiable Instruments Act had not been initiated against the accused and the instant FIR had been registered with a view to arm twist the petitioner. He therefore, contends that the petitioner was entitled to the concession of anticipatory bail.

4. The Counsel for the State on the other hand contends that a bare perusal of the FIR would reveal that the petitioner had committed the offences in question. She had promised to provide funds of Rs.20 crores to a company represented by the complainant for which she had received a sum of Rs.20 lacs as a commission. However, the said funds were not provided. Multiple cheques issued as security had been dishonoured. Even during the pendency of the present petition, the petitioner had been given many opportunities to effect a settlement. Despite a compromise having been arrived at the Mediation and Conciliation Centre of this Court, the petitioner did not adhere to the terms of the compromise. Therefore, as the offence was prima facie established and the conduct of the petitioner, even during the pendency of the present petition clearly showed that she had no intention to adhere to the terms of the compromise and refund the money to the complainant, she was not entitled to the grant of pre-arrest bail.

5. The Counsel for the Complainant while referring to the reply dated 7.9.2022 contends that the petitioner in the present case had cheated the complainant and had taken a sum of Rs.20 lacs on the pretext of getting the loan sanctioned to the tune of Rs.20 crores in favour of the client of the complainant. A sum of Rs.20 lacs had been received in advance in cash and an MOU had been entered into between the petitioner and the complainant. The petitioner had duly acknowledged she had received a sum of Rs.20 lacs from the complainant for the purpose of arranging the bank guarantee for the

client of the complainant. Therefore, it did not lie in the mouth of the petitioner to state that some money had been taken by the petitioner as loan amounting to Rs.1.5 lacs and the complainant had taken blank cheques for the repayment of the same. In fact, two subsequent cheques for a sum of Rs. 15 lacs and Rs.7 lacs respectively being the principle and interest were also dishonoured. She had availed multiple opportunities to effect a settlement but had not adhered to the terms of this compromise arrived at during the pendency of this petition. The present case could not be said to be one of a civil nature. In fact the offences under Section 406 and 420 IPC were clearly made out. Even otherwise she was a habitual offender with multiple cases pending against her.

6. I have heard learned Counsel for the parties.

7. The Hon'ble Supreme Court in the case of "**Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870**", has 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. A perusal of the reply filed by the complainant dated 07.09.2022 would show that the petitioner is an accused in multiple cases, a chart of which is as under:-

Sr. No.	Particulars of Case	Court	Status
1.	FIR No.50 dated 7.3.2022 U/S 174-A IPC P.S. Division No.5, Ludhiana	Additional Sessions Judge, Ludhiana	Interim protection granted in favour of the petitioner, however, petitioner had failed to comply with the conditions as imposed by the Trial Court for grant of interim bail
2.	COMA-11541 of 2016 Ramesh Kumar Gandhi Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Petitioner has been declared Proclaimed Offender by thge Trial Court as she had failed to appear despite service.
3.	COMA-16342 of 2018 Kunal Malik Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Fixed for evidence of complainant.
4.	COMA-15621 of 2018 Ramit GuptaVs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	For appearance of the accused
5.	COMA-735 of 2018 Ashish Arora Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Complaint U/S 211, 464, 499, 500, 120-B IPC has been dismissed
6.	COMA-442 of 2018 Pyare Lal Bansal & Co. Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Complaint has been dismissed in default.
7.	COMA-2722 of 2019 Vishal Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	For appearance of the complainant through nonailable warrants of arrest
8.	COMA-8479 of 2020 Archana Jain Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Service of accused
9.	COMA-8478 of 2020 Archana	Judicial Magistrate	Service of accused

	Jain Vs. Savita Jain	Ist Class, Ludhiana	
10.	COMA-8077 of 2020 M/s ANG International Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Proclamation issued against the accused
11.	COMA-6750-2020 Ajay Singh Multani Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Cross examination of complainant and for furnishing of surety bond by the petitioner/accused
12.	COMA-6443 of 2020 Nirdosh Sachdeva Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Cross examination of complainant and for furnishing of surety bond by the petitioner/accused
13.	COMA-15810 of 2021 Agya Paul Singh Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	For service of accused/petitioner
14.	COMA-15809 of 2021 Mandeep Kaur Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	For service of accused/petitioner
15.	COMA-8612 of 2021 Anil Jain Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Complainant evidence
16.	COMA-8027 of 2021 Sandeep Aggarwal Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Bailable warrants has been issued against the accused
17.	COMA-8028 of 2021 Sandeep Aggarwal Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Fresh summons has been issued against the accused/petitioner.
18.	COMA-2010 of 2021 Mukesh Khanna Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	Cross examination of complainant and for furnishing of surety bond by the petitioner/accused.
19.	COMA1208-2021 Chakar International Vs. Savita Jain	Judicial Magistrate Ist Class, Ludhiana	For notice of accusation/against the accused/petitioner and for furnishing of surety bonds by the petitioner/accused

8. The allegations levelled against the petitioner that she had received a sum of Rs.20 lacs in cash to provide finances to the tune of Rs.20 Crores to the client of the complainant appear to be *prima facie* correct in view of the MOU and other documents executed between the parties. The petitioner availed multiple opportunities at various stages of proceedings but has refused to return the amount taken from the complainant. In fact, even during the pendency of the present petition a settlement was arrived at in March 2023 for a sum of Rs.11 lacs. Even the terms of the said settlement had not been adhered to by the petitioner. On the contrary repeated adjournments were being sought on one pretext or the other. Further the criminal antecedents of the petitioner are apparent from the chart reproduced hereinabove. As the offences are *prima facie* established, the investigation is to be taken to its logical conclusion and the petitioner is a

habitual offender, she is not entitled to the concession of anticipatory bail.

9. In view of the above, I find no merit in the present petition and the same stands dismissed.

10. However, the observations made hereinabove are only for the purposes of deciding this anticipatory bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

December 05, 2023

Vinay

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