IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24697-2022
Date of decision : 05.09.2023

HARPAL SINGH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Suvir Sidhu, Advocate with
Mr. Harlove Singh Rajput, Advocate and
Mr. Sahil Kumar Malotiaa, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

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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.0443 dated 05.12.2021 (Annexure P-1) registered under Sections 409, 420 IPC at Police Station Sadar Fatehabad, District Fatehabad.

2. The brief facts of the case are that the aforementioned FIR was registered on the complaint of the Assistant Registrar, Co-operative Societies, Fatehabad against Devi Lal, Manager, the Hanspur Primary Agricultural Cooperative Society, Hanspur (PACS Hanspur) and Mukhraj, Retail Sale Centre, Birabadi with the allegations that in the Audit Report of the Hanspur PACS Ltd. Hanspur, embezzlement of Rs.25,51,247/- of fertilizer had been found to have been done by Mukhraj and an embezzlement of Rs.1,93,35,472/- of fertilizer had been found to be done by Devi Lal.

Pursuant to the registration of the FIR, Devi Lal was joined in the investigation and arrested on 27.04.2022. On 28.04.2022, he suffered his disclosure statement stating that he had been appointed in the year 1988 as a Salesman in PACS Hanspur and promoted to the post of Manager on 06.10.2018 in the place of Harpal Singh (petitioner). He disclosed that he had taken charge on 06.10.2018 from the petitioner and contrary to the rules had purchased material from Mittal Agriculture in the year 2019 without the permission of higher officials. He had made a complaint against the earlier Manager Harpal Singh (petitioner) to the higher officials on account of him (Harpal Singh) not handing over the entire charge to him (Devi Lal). Devi Lal further disclosed that Harpal Singh had committed an embezzlement of Rs.1,32,25,963/- by not giving charge of the goods to him (Devi Lal) despite repeated requests of higher officials. Devi Lal got recovered an amount of Rs.8,000/-

On 07.05.2022, Suresh Kumar, Junior Accountant, Branch Manager, Co-operative Bank, Branch Hanspur produced the inquiry report regarding the embezzlement done by the petitioner. In the said detailed inquiry report (Annexure R-4) based on an order dated 04.10.2021 (Annexure R-3) it was found that the petitioner had embezzled an amount of Rs.2,20,26,314.52/-. A communication regarding the same had been sent by the Branch Manager (Branch Hanspur) to the SHO, P.S. Fatehabad (Annexure R-2).

The report under Section 173(2) Cr.P.C. was submitted against Devi Lal on 28.06.2022.

On 07.10.2022, Mukhraj was joined in the investigation and he produced documents regarding depositing of his share of the embezzled amount of Rs.25,51,247/- in the PACS, Hanspur.

3. The learned counsel for the petitioner contends that the petitioner is not named in the FIR. Pursuant to his retirement, he had been issued a No Dues Certificate (Annexure P-4) on 13.02.2020 which would show that he was not responsible for any embezzlement. As per the Special Audit Report (Annexure P-3), three persons were found to be *prima facie* liable namely, Devi Lal, Mukhraj and Kulwinder Singh and the total stock embezzlement came to approximately Rs.31,80,7591.00. The petitioner was not found to be liable for any embezzlement. As per the report dated 16.12.2020 (Annexure P-5) of the Inspector Cooperative Societies sent to the Assistant Registrar, Cooperative Societies, Fatehabad for Hanspur, PACS, the liability the petitioner was between Rs.16-20 Lakhs and he had already deposited an amount of Rs.16,03,496/- in the Government accounts. Devilal as seller was liable for stock embezzlement to the extent of Rs.1,93,35,472/-, Mukhraj was responsible for an embezzlement of stock worth Rs.25,51,247/- whereas Kulwinder Singh was responsible for the embezzlement of stock to the extent of Rs.24,80,336/-. Thus, the total embezzlement amounted to Rs.2,43,57,317/-. It was only later, on the disclosure statement of Devi Lal that the bulk of the liability had been placed on the petitioner leading to a report dated 10.02.2022 (Annexure R-4) based on an office order dated 04.10.2021 (Annexure R-3) as per which the petitioner was liable for an embezzlement of Rs.2,20,26,314.52 and the said report had

been communicated to the SHO, P.S. Fatehabad on 07.05.2022 (Annexure R-2). He contends that the facts and figures mentioned in the inquiry report (Annexure R-4) find mention in the Audit Report (Annexure P-5) as per which the liability of the petitioner was only between Rs.16-20 lakhs. Even otherwise, as per Service Rules of PACS, the Sale Register and the complete relevant record was to be maintained by the salesman and not the petitioner. As the petitioner had already joined investigation and co-operated with the same, he was entitled to the concession of bail because the case was otherwise based on documentary evidence.

4. A status report dated 31.08.2023 by way of an affidavit of Kulwant Singh, HPS, Deputy Superintendent of Police, Fatehabad has been filed on behalf of the State by the learned counsel for the State. He contends that the petitioner remained a Manager with the PACS, Hanspur uptil 06.10.2018 after which Devi Lal was posted as a Manager. The reports Annexures P-3 and P-5 do not refer to the period of embezzlement. In fact, on account of the discrepancies at the Hanspur PACS, vide order dated 04.10.2021 (Annexure R-3), a team was constituted to inquire into the facts and submit a report after conducting a special inspection. Based on the inspection conducted, an investigation report was submitted to the General Manager, Fatehabad Central Co-operative Bank Ltd., Fatehabad (Annexure R-4). The said report which is a more detailed one also pertains to the period between 2015-2019 which is the period during which the petitioner was posted as a Manager of PACS. It was in these circumstances that the magnitude of the fraud

had been enhanced and the defalcation at the instance of the petitioner had increased. A perusal of this report would reveal that the petitioner had maintained parallel records to commit embezzlement. Therefore, the petitioner could not take advantage of the facts and figures mentioned in the Inquiry reports (Annexures P-3 and P-5).

Further, as the role of the petitioner in the embezzlement had been discovered later, the petitioner had managed to obtain a No Dues Certificate (Annexure P-4) on 13.02.2020. He contends that the sheer magnitude of the embezzlement at the instance of the petitioner did not entitle him to the grant of anticipatory bail moreso as the offence was *prima facie* established on the basis of inquiry reports/audit reports and the custodial interrogation of the petitioner was necessary to take the investigation to its logical conclusion.

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

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, the petitioner was posted as Manager with the Hanspur PACS between 2015 and October, 2018. The inquiry report Annexure R-4 and communication addressed to the SHO (Annexure R-2) would clearly show that the total embezzlement at the instance of the petitioner is Rs.2,20,26,314.52. The amount of Rs.16,03,496/- deposited by the petitioner in the Government accounts on the basis of an incomplete inquiry report (Annexure P-5) where the period of embezzlement had not been mentioned is petty change considering the defalcated amount. In fact, it appears that the said amount was deposited knowing that he was likely to be exposed further if and when a more detailed investigation was concluded. Therefore, as serious allegations have been levelled against the petitioner and the investigation has to be taken to its logical conclusion for which the custodial interrogation is necessary and the offence is *prima facie* established on the basis of the material collected so far, no case for the grant of anticipatory bail is made. Therefore, the present petition stands dismissed.

8. 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