

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

CRM-M-23568-2023(O&M)

Date of Decision:-25.07.2023

Pooja Chauhan.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Mr. Mayank Sharma, Advocate &
Mr. Satender Kumar, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

Mr. Vikas Lochhab, Advocate for the Complainant.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.0296 dated 25.08.2022 under Sections 120-B, 420, 467, 468, 471, 34 IPC registered at P.S. Barauda, Sonipat, Haryana.

2. The brief facts of the case are that a complaint came to be filed under Section 156(3) Cr.PC at the instance of the complainant Raj Kumar against Suresh @ Kala, Pooja (petitioner), Rahul and one Anil. As per the complainant his son Sahil was education but unemployed. On 15.09.2019 he (complainant) had met Suresh @ Kala (accused no.1) who enquired about the education of Sahil and stated that co-accused Karan (accused no.2) could obtain a job for Sahil in the Railway Department. He (complainant) was also introduced to one Ram Krishan by accused no.1 Suresh @ Kala and the said Ram Krishan told him that the accused could provide a job to his (complainant's) son. Thereafter, accused no.2 Karan told him (complainant) that one Pooja Chauhan (petitioner) was working in the Railway Department

on a high post and she could provide a job through the Minister Quota. An amount of Rs.10,60,000/- was demanded. However, the deal was finally struck at Rs.10,00,000/- for appointing Sahil at the post of TT in the railway department. He (complainant) had given an amount of Rs.5 lacs as advance at the house of accused no.2 in the presence of Sahil and Ramrati. The original documents had been retained by Karan. On 30.09.2019 he (complainant) was informed that Pooja had asked Sahil to reach Kanpur Railway Station where accused no.4 Rahul would fill the form of Sahil for the job. He (complainant) along with his son Sahil reached Kanpur Railway Station where they met accused no.4-Rahul. An amount of Rs.3 lacs was paid to Rahul. Thereafter accused no.3-Pooja (petitioner) gave a paper to Sahil who signed the same. Thereafter, they (complainant party) were asked by accused no.3 Pooja to go to Lucknow railway station where other children were present. Sahil had gone to Lucknow and stayed at a hotel. After 2/3 days accused no.2 Karan and accused no.3-Pooja made a call to Sahil and stated that the job would take sometime and he was to go back. Thereafter in October 2019 he (complainant) had given an amount of Rs.3,00,000/- to accused no.1 & 2 and a further sum of Rs.2 lacs to accused no.2. Despite having paid Rs.10 lacs neither was his son provided a job nor was the money refunded back. However, a forged joining letter was provided. As the money had not been refunded back, cheques were issued which also came to be dishonoured. Legal action was sought.

3. The Counsel for the petitioner contends that she has been falsely implicated in the present case. The dispute was essentially of civil nature. Proceedings under Section 138 of the Negotiable Instruments Act, 1881 had been initiated against the petitioner at the instance of the complainant. The FIR had been registered after a delay of 03 years at the instance of the complainant who was a police official and his relative who was an Inspector. The petitioner had initially been granted the concession of interim anticipatory bail by the Court of ASJ, Sonapat but the same came to be dismissed. As the petitioner had joined investigation vide order dated 10.05.2023 and got recovered Rs.70,000/-, she was entitled to the concession of anticipatory bail.

4. The Counsel for the State on the other hand has filed a reply dated 24.07.2023 in court today. The Same is taken on record. While referring to the reply he contends that the entire amount had been received

by the co-accused on the pretext that the petitioner who was an officer of the Railways Department and had cordial relations with the concerned minister etc., could provide a job to the son of the complainant. Therefore, the petitioner was in fact the main accused. Even otherwise, the cheques issued by the petitioner to refund the amount received by the accused had also been dishonoured which further showed that the petitioner was the main accused and did not deserve the concession of anticipatory bail. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870.***

5. The Counsel for the Complainant also contends that there were direct and specific allegations against the petitioner. Approximately Rs.8 lacs were to be recovered from her. She along with her co-accused in conspiracy with each other had cheated the complainant of an amount of Rs.10 lacs on the pretext of getting his son Sahil recruited in the Railway Department. After obtaining the amount the petitioner and the co-accused had supplied forged and fake joining letters and an application form to the complainant and his son. As per investigation a sum of Rs.8.5 lacs had come to the share of the petitioner. The petitioner had also issued cheques to the complainant which had been dishonoured. Therefore, as the offence was prima facie established the petitioner was not entitled to the concession of anticipatory bail even though she had joined investigation.

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***”.

8. Coming back to the facts of the present case apparently the petitioner is the main accused. It was on her assurance of providing a job with the Railways Department that a sum of Rs.10 lacs had been given to the accused. Out of the said amount Rs.8.5 lacs was received by the petitioner. She had also provided forged documents/joining letters. The cheques in question purportedly refunding the money received had also been issued by her, which came to be dishonoured. Therefore, *prima facie* the offence against the petitioner is established. Thus, even though the petitioner might have joined investigation the said fact does not entitle her to the grant 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 in this order are only for

deciding the instant petition and the Trial Court shall decide the matter on the basis of the evidence lead before it uninfluenced by any observations made hereinabove.

(JASJIT SINGH BEDI)
JUDGE

July 25, 2023
Vinay

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