

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-23715-2023

Date of Decision : 11.05.2023

Sourav Sehgal

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present : Mr. Vinod K. Kaushal, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

1. The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.233 dated 24.09.2022 registered under Section 420 of the Indian Penal Code, 1860 at Police Station Chheharta, District Police Commissionerate Amritsar, Amritsar.

2. The above-said FIR was registered on the complaint moved by Jaswant Singh alleging that in the year 2016 a case was registered against him and in the said accidental case Sourav Sehgal, Advocate (the petitioner) took Rs.7,50,000/- from him in order to give the same to Sh. N.K. Narang, Advocate for filing a case in the Hon'ble High Court. But Sourav Sehgal has not given the said amount to Sh. N.K. Narang, Advocate. Besides the above-said amount, Sourav Sehgal also took amount of Rs.4,50,000/- from him to waive off the limit taken by him from the bank. When he asked Sourav Sehgal to return his money, he refused to do so and moved a false complaint against him and also threatened him of dire consequences.

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3. Learned counsel for the petitioner, inter alia, contends that the petitioner has been falsely implicated in the present case. In fact the petitioner is the victim of the conspiracy hatched by the complainant. There is undue and unexplained delay of around 05 years in lodging of the FIR. The complainant has no proof to show that he had paid the money to the petitioner. The whole case is based on documentary evidence. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is ready and willing to join the investigation. Therefore, the present petition may be allowed.

4. Notice of motion.

5. On the asking of the Court, Mr. Joginder Pal Ratra, Senior D.A.G., Punjab, who is present in the Court, has accepted notice on behalf of the respondent-State and vehemently opposed the present petition on the grounds that the petitioner cheated the complainant for an amount of Rs.12,00,000/-. For thorough investigation of the case custodial interrogation of the petitioner is required. Therefore, the present petition may be dismissed.

6. Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. As per the prosecution, the petitioner fraudulently took amount of Rs.12,00,000/- from the complainant and did not return the same.

7. Furthermore, investigation is still going on in the present case. For thorough investigation of the case and for recovery of cheated amount, custodial interrogation of the petitioner is necessary. It is settled

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proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in *State Vs. Anil Sharma : (1997) 7 SCC 187* held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

8. Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

9. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

11.05.2023
Kothiyal

(ASHOK KUMAR VERMA)
JUDGE

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