

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-24424-2023
Date of decision : 15.05.2023

Shashi Kumari

Petitioner

V/S

State of Haryana

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Ramandeep Singh, 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.05 dated 06.01.2022 registered under Sections 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 at Police Station Sector 17/18, District Gurugram.

2. The above-said FIR was registered on the complaint made by Pushpender Arya, Joint Director, National Horticulture Board (NHB), Sector-18, Gurugram alleging that one Anoop Kumar along with some other unknown persons committed the serious economic offences. From the year 2014 onwards, NHB engaged the services of M/s Bedi and Bedi from 01.04.2014 to 31.03.2016, M/s Trio Security and Intelligence Pvt. Ltd. From 01.04.2016 to 31.03.2018 and M/s M4 Solutions Pvt. Ltd. From 01.04.2018 to 30.09.2021 for supply of contractual manpower as per terms of Technical Support Group (TSG)

under the Operational Guidelines introduced by the Mission for

Integrated Development of Horticulture. Under this scheme, various persons were engaged on contractual basis by NHB through the aforesaid manpower supply agencies. Anoop Kumar was contractually engaged through one of the empaneled agencies and was working at NHB, Head Office, Gurugram since 2009. The final attendance lists received from DA&FW was to be sent by the petitioner to the agencies for raising invoices. The petitioner used to forge the list received from DA&FW by adding the names and account numbers of various fictitious persons who were actually not contractually engaged and after forging the signature of officials of DA&FW he used to compile the same in NHB's records to be treated as genuine and the said forged list, used to be sent by him to the empaneled agencies and empaneled agencies claimed to have made direct payments to these fictitious persons on monthly basis. In this manner, NHB was dishonestly induced by the petitioner and the unidentified conspirators to release money towards payment of fake wages and other dues. The payments have been transferred to the bank account of 10 persons namely Preeti, Sanjay Kumar Tripathi, Kanchan, Hardeep Kumar, Tejveer Singh, Shashi Kumari (the petitioner), Sandip Kumar, Rohan, Seema and Sunil. These 10 persons were never engaged on contractual basis.

3. Learned counsel for the petitioner, inter alia, contends that the petitioner has been falsely implicated in the present case on the basis of disclosure statement made by co-accused Anoop Kumar. She was neither involved in any conspiracy nor had any intention to commit the

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alleged offence. Her bank account details were misused by accused Anoop Kumar, who had deposited the amount in the joint bank account of the petitioner and her husband Om Parkash. The petitioner is not the beneficiary of the alleged amounts which were transferred in the bank account which primarily belongs and managed by her husband Om Parkash, who is also working in one of the agencies in NHB at Gurguram. Nothing is to be recovered from the petitioner and her 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. Munish Sharma, D.A.G., Haryana, 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 was neither a contractual employee of NHB nor she had any connection with the same. The petitioner along with co-accused Anoop Kumar cheated the complainant and defrauded the public exchequer. An amount of Rs.8,69,619/- has been transferred in the account of the petitioner by co-accused Anoop Kumar. For through 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 hatched a conspiracy along with co-

accused Anoop Kumar with a sole motive and intention of cheating and defrauding the public exchequer. Anoop Kumar used to receive his share of money from the persons in whose account the amount was transferred. In this way, Anoop Kumar atleast cheated NHB of Rs.48,60,594/- out of which a sum of Rs.8,69,619/- has been transferred in the account of the petitioner. After transfer of the said amount in her account, the petitioner transaction in her account and withdrew some amount which shows that she was well aware about the transfer of money in her account by co-accused Anoop Kumar.

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 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 ensconced 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

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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.

15.05.2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No