

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

CRM-M-24721-2023

Date of Decision:-17.07.2023

Pooja.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Mr. Johan Kumar, Advocate for the Petitioner.

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

Mr. Madan Sandhu, Advocate for the Complainant.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Section 438 Cr.PC is for grant of anticipatory bail in case FIR No.878 dated 23.09.2022 under Sections 406, 420 IPC registered at Police Station Assandh District Karnal.

2. Briefly stated the allegations in the FIR are that the complainant Ramdiya claims himself to be a poor farmer who had been allured on the pretext of sending his son abroad on a Study Visa by the accused including the petitioner. It is alleged that the deal was struck for Rs.25 lacs and the complainant had paid a sum of Rs.3,50,000/- to Rajinder on 21.04.2019 in the presence of Rajesh Kumar. On the same day he had also given Rs.2,50,000/- to accused Balwinder (husband of the petitioner) after arranging the same from a commission agent. Similarly, the complainant had paid a sum of Rs.5 lacs to Balwinder and Rajinder on 09.10.2019. On

04.11.2020, he had transferred Rs.3,50,000/- through RTGS into the account of Balwinder. On 27.08.2021 he had paid a sum of Rs.2,50,000/- to Balwinder and Rajinder in the presence of Rajesh. He had also paid a sum of Rs.2 lacs to petitioner-Pooja at her house and Rs.4 lacs to Rajinder. She had also assured the complainant that co-accused would easily send his son abroad. However, the accused did not fulfill their promises and also refused to refund the amount received by them. The instant FIR came to be registered with these allegations.

3. The Counsel for the petitioner contends that no specific role has been attributed to the petitioner except vague allegations of having handed over Rs.2 lacs to her. He contends that the petitioner has been falsely implicated in the present case being the wife of the accused Balwinder. In fact she was a housewife and had nothing to do with the business affairs of her husband. As she was ready and willing to join the investigation she was entitled to the concession of anticipatory bail, more so as she was the mother of two young children.

4. The Counsel for the State on the other hand contends that the petitioner and her husband are habitual offenders. The petitioner is an accused in one another case bearing FIR No.879 dated 23.09.2022 under Sections 405, 420 IPC P.S. Assandh, Karnal in which she is absconding. Her husband Balwinder Singh is an accused in as many as 05 FIRs i.e. FIR No.0926 dated 11.10.2022 under Sections 406, 420 IPC P.S. Assandh, FIR No.0715 dated 09.08.2022 under Sections 406, 420 IPC P.S. Assandh, FIR No.0265 dated 15.09.2021 under Sections 406, 420 IPC P.S. Assandh, FIR No.0879 dated 23.09.2022 under Sections 406, 420 IPC P.S. Assandh and FIR No.878 dated 23.09.2022 under Sections 406, 420 IPC P.S. Assandh.

The antecedents of the petitioner and her husband along with the nature of

allegations levelled in the present FIR did not entitle the petitioner to the grant of anticipatory bail.

5. The Counsel for the Complainant has also vehemently argued that the entire family of the petitioner i.e. her husband and brother-in-law are involved in multiple cases of a similar nature. Poor persons were misled by the accused and made to part with a huge amount of money on the pretext of sending people abroad. However, neither were the persons sent abroad nor was their money refunded. He contends that as the offences of this kind were on the rise in the States of Punjab and Haryana, the petitioner did not deserve any sympathy. As the offences against the petitioner were *prima facie* established she was not entitled to the concession of anticipatory bail.

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. In the instant case, the offence is prima facie established against the petitioner and her co-accused. Further the petitioner and her family members including her husband are habitual offenders with multiple cases registered against them as has been enumerated herienabove. Therefore, she is not entitled 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.

(JASJIT SINGH BEDI)
JUDGE

July 17, 2023
Vinay

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