

CRM-M-25926-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25926-2023 (O & M)

Date of decision:09.10.2023

Robin Khan

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Waqar Ahmed Khurshid, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.407 dated 28.10.2021 under Sections 120-B, 408 and 420 IPC registered at Police Station City Sohana, Gurgaon, Haryana.

2. The brief facts of the case are that on 28.10.2021, a complaint was submitted by Lalit Kumar, Manager Aashish Transport Company, Sohana, Gurugram. It was alleged that M/s Aashish Transport Company was working for the Amazon company. The delivery boys had been employed for delivery of the orders of the customers of the Amazon company. This company had employed Md. Muzamil and Rishi Raj who had been working at the company for the last one year. They had come to know that Md. Muzamil and Rishi Raj in connivance with each other had been exchanging the company's original products for duplicate products and

were supplying the same to the customers. Legal action was sought.

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3. Based on the allegations levelled, Md. Muzamil and Rishi Raj were arrested on 28.10.2021. Their respective disclosure statements were recorded, based on which, a raid was conducted at the house of one Aarif who could not be found. Raids were also conducted at the house another accused-Dara Singh for recovering the car bearing Registration No. RJ-02-CF-6836 used in the crime. He could also not be found.

Subsequent thereto, accused-Aarif and Dara Singh were joined in investigation. Dara Singh got recovered the Baleno car bearing Registration No.RJ-02-CF-6836 alongwith its original RC. All the accused were released on bail and the report under Section 173 Cr.P.C. was submitted against them on 28.04.2023.

The name of the petitioner-Robin Khan was disclosed by Aarif and Dara Singh who stated that 34 watches which had been substituted were with the petitioner-Robin Khan.

The petitioner sought the concession of anticipatory bail and on joining the investigation, disclosed that 34 watches were sold and the proceeds of the sale were received by Dara Singh, out of which an amount of Rs.15,000/- had been sent by Dara Singh in his (petitioner's) bank account.

4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and has been nominated as an accused only in the disclosure statement of his co-accused, all of whom have been granted bail. As the petitioner had already joined the investigation and had co-operated with the same, no case for custodial interrogation was made out and he was entitled to the concession of anticipatory bail.

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5. The learned counsel for the State, on the other hand, contends that the petitioner is, in fact, the main accused. He alongwith his co-accused/Rishi Raj fraudulently booked parcels of watches from Aashish Transport through Amazon Company, removed the original 34 watches from the parcels, replaced the same with the duplicate watches and thus, caused wrongful gain to himself and wrongful loss to the complainant company. During the course of investigation, he had not disclosed as to whom the watches had been sold nor the *modus operandi* adopted for committing the offence in question. Merely because the co-accused had been granted the concession of regular bail, did not entitle the petitioner to the grant of anticipatory bail as the offences were *prima facie* established and the investigation was to be taken to its logical conclusion.

6. I have heard the learned counsel for the parties.

7. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', 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

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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.***

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8. In the instant case, during the course of investigation, the disclosure statements of co-accused, namely, Aarif and Dara Singh were recorded wherein they have stated that 34 watches were in the possession of the petitioner. On joining the investigation, the petitioner disclosed that he had sold the same and the proceeds of the sale had been shared between the accused. He, however, did not disclose the identities of the persons to whom the watches were sold to nor did he disclose the manner in which the offence was committed effectively stonewalling the investigation. *Prima facie*, the offence stands established against the petitioner and non-cooperation in the investigation alongwith the fact that the investigation is to be taken to its logical conclusion does not entitle the petitioner 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, it is made clear that the observations made in this order are only for the purpose of deciding this bail application and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

October 09, 2023

sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No