

**209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-27125-2022

Date of decision: 21.03.2023

Jagseer Singh

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Manu Loona, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

Ms. Ramandeep Kaur, Advocate
for the complainant.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court praying for grant of anticipatory bail in case FIR No.89 dated 27.05.2022, under Sections 420, 120-B of IPC and Section 13 of Punjab Travel Professional (Regulation Act), 2014, registered at Police Station Nihal Singh Wala, District Moga.

As per the facts of the case, FIR was lodged on the statement of complainant-Jaspreet Singh. The sum and substance of the allegations made by the complainant that he is agriculturist by profession and his whole family wanted to settle in Canada. As he was having an old acquaintance with Jagseer Singh (petitioner), he expressed his desire to go abroad in front of him. On hearing, Jagseer Singh assured him that he would make arrangement for sending him along with his family to Canada. He asked the complainant to pay Rs.20,00,000/- each. The complainant trusted him and thereafter, kept on paying the money demanded by the petitioner. He introduced the complainant with other

persons and thus, he was taken to Delhi Airport as well. He told him to stay in hotel also. He introduced him to one Harish Kumar to whom he paid Rs.30,00,000/-. Finally, he found himself cheated. Neither they were sent to Canada nor the money was returned. Aggrieved by the same, FIR was lodged to take legal action against the culprits. Apprehending the arrest, petitioner approached the Court of learned Additional Sessions Judge, Moga praying for grant of bail. However, after hearing counsel for the parties, learned Additional Sessions Judge declined the same vide order dated 10.06.2022. Aggrieved by the same, petitioner is before this Court praying for grant of anticipatory bail.

It has been vehemently contended by counsel for the petitioner that petitioner has been falsely implicated in this case. He has submitted that the alleged payment has been made by the complainant to the co-accused and not to the petitioner. He has submitted that the petitioner has only introduced the complainant with co-accused Harish Kumar to whom the payment was made. He further submitted that the allegations levelled against the petitioner are totally false and frivolous. He submits that the petitioner has no criminal antecedents. He also submits that as per the agreement dated 18.11.2021 executed between co-accused and the complainant, a transaction has been made by the complainant with Harish Kumar and not with the petitioner. He has also submitted that the petitioner has joined investigation in pursuance to order dated 22.06.2022 and thus, the same deserves to be made absolute.

Learned counsel for the complainant has opposed the submissions made by counsel for the petitioner. She has submitted that petitioner has duped the complainant for a heavy amount. She submits

that it was the petitioner who won the faith of the complainant and introduced him to the co-accused. She submits that the petitioner had been demanding money time and again from the complainant and it was on his asking, the complainant had borrowed such a heavy amount but finally, he found himself cheated by the petitioner. She further submits that on 25.08.2022, petitioner has offered to deposit an amount of Rs.4,00,000/- before the trial Court within a month to show his *bona fide*. She submits that till date the petitioner has not complied with the same and thus, he has misled the Court as well and thus, the anticipatory bail be dismissed.

Learned State counsel has also opposed the submissions made by counsel for the petitioner. He has submitted that there are specific allegations against the petitioner. He submits that the complicity of the petitioner is writ large and it is on the asking of the petitioner, complainant gave money to co-accused for sending him abroad. He has further submitted that the petitioner has not approached this Court with clean hands. He assured the Court on 25.08.2022 that he would deposit Rs.4,00,000/- before the trial Court within a month but till date, he has not complied with the same. He submits that though the petitioner has joined investigation in pursuance to order dated 22.06.2022, however, he did not cooperate with the investigating agencies and thus, he does not deserve to be granted anticipatory bail which is an extraordinary remedy.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that the petitioner has been specifically named in the FIR by the complainant. It was the petitioner who had an old acquaintance with the complainant and thus, the complainant trusted him.

Petitioner introduced the complainant with co-accused Harish Kumar and thus, the complainant was duped by the petitioner in conspiracy with co-accused. It is apparent from the record that on 25.08.2022 the petitioner offered to deposit Rs.4,00,000/- in the trial Court. Today, during the course of arguments, it was submitted before this Court that the petitioner did not deposit the same. On asking of the Court, it was found that the petitioner was not ready to comply with the undertaking given before this Court.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

As per the law settled by the Hon'ble Supreme Court, in

Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632, while

granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds

to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

The Hon'ble Supreme Court in State Vs. Anil Sharma, (1997)

7SCC 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 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.

As held by the Hon'ble Supreme Court in the judgment *X Vs. Arun Kumar C.K. and another, 2022 LiveLaw (SC) 870*, it is not only the requirement of custodial interrogation on the basis of which the anticipatory bail can be declined, the Court is to see whether there is any *prima facie* case made out against the accused. There are specific allegations against the petitioner and despite having been given undertaking before this Court to deposit Rs.4,00,000/-, he has not complied with the same and had shown no inclination to comply with the same as well. Thus, this Court do not find any merit in the petition and the same is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

21.03.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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