

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(107)

2023:PHHC:080991
CRM-M-28048-2023
Date of Decision: 31.05.2023

Karan Singh

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Amit Chaudhary, Advocate for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

Mr. Abhijeet Sharma, Advocate for the complainant.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 438 Cr.P.C seeking the benefit of anticipatory bail to the petitioner in case FIR No.51 dated 26.4.2023 under sections 120-B, 406, 420, 467, 468 and 471 I.P.C, registered at Police Station, Jakhal, District Fatehabad.

As per factual matrix, the FIR in question was registered on the statement of Rahul son of Shamsher and others, wherein it was alleged that complainant executed an agreement to sell with the accused persons of total land measuring 23 kanals 12 marlas for an amount of Rs.24,50,000/- per acre vide agreement dated 4.1.2023. The earnest money of Rs.5 lakh was paid to the accused vide RTGS dated 3.1.2023. Thereafter, on 5.3.2023 property dealer namely Netarpal and Thakral had to come to receive the amount. Complainant on 6.3.2023 reached at the house and shop of the accused but it was found locked. They checked in the branch of I.D.F.C First Bank to know the information about the bank account in which they had deposited the amount in question, however, they came to know that they

have been cheated by Netarpal and Thakral in connivance with other accused persons. A request was made to take legal action against the culprits.

After registration of the FIR, investigation commenced. Apprehending the arrest, petitioner approached the court of learned Sessions Judge, Fatehabad for grant of bail, however, after hearing the parties, the same was declined vide order dated 11.5.2023. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in this case. It is submitted that there is no allegation regarding any transfer of the amount to the petitioner. He submits that though the petitioner is brother-in-law of the co-accused Netarpal, however, that in itself is no ground to establish his complicity in the alleged offence by the complainant. He submits that neither the petitioner is signatory to the agreement to sell nor he received any amount. He further submits that petitioner is not the beneficiary of the alleged transaction. He submits that petitioner is only employed in the office of Netarpal as Office Boy. He submits that present case is triable by a Magistrate and maximum sentence is 7 years and thus petitioner deserves to be granted bail.

Learned State counsel on instructions has opposed the submissions made by counsel for petitioner. He submits that during investigation complicity of the petitioner has been found in this case. He submits that petitioner is brother-in-law of co-accused Netarpal and he in conspiracy with the co-accused has committed cheating with various innocent complainants.

Learned counsel for the complainant has also opposed the submissions made by counsel for petitioner. He submits that granting bail to the petitioner at this stage would hamper the course of a free and fair investigation.

I have heard learned counsel for the parties at length and have gone through the record of the case carefully.

From the perusal of the record it is apparent that the investigation in this case is under progress and during investigation it is found that petitioner is the brother-in-law of the co-accused Netarpal. He in conspiracy with the co-accused duped various persons. During investigation it has also been found that petitioner and Rohtash in collusion with the co-accused Netarpal, Thakar Singh and Harpal have defrauded complainants of Rs.03,43,12,187/- by making false and fabricated agreements to sell in their favour. During investigation bank account in which the transactions were made were found to have been operated by the petitioner, Karan Singh and Rohtash. Thus, a prima facie case is found to be have been established against the petitioner. The investigation in this case is at threshold.

Hon'ble the Supreme Court in ***State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187*** has 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 if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected

person knows that he is well protected and insulted by a pre-arrest bail during the time he 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 task of disinterring offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in **Gurbaksh Singh Sibbia Vs.**

State of Punjab, AIR 1980 SC 1632 has held as under:-

“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.*

In the above said case, the Hon'ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual.

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances. Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in his favour.

Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

31.05.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No