

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

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(i) CRM-M-30671-2022
Date of decision : 30.01.2023

Mayank Bhai VyasPetitioner

Versus

State of Haryana Respondent

(ii) CRM-M-35475-2022
Date of decision : 30.01.2023

Mayank Bhai VyasPetitioner

Versus

State of Haryana and another Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Parveen Sharma, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. A.G., Haryana
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petitions under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.17 dated 08.01.2020 registered under Sections 381, 406, 420, 506, 120-B of the Indian Penal Code, 1860 (Sections 467, 468 and 471 of the IPC were added later on) at Police Station Sonipat City, District Sonipat and for setting aside order dated 14.07.2021 passed by learned Judicial Magistrate First Class, Sonipat whereby the petitioner has been declared as proclaimed person and all consequential proceedings arising therefrom.

The above-said FIR was registered on the complainant made by complainant-Manjesh alleging that he is running a medical store in the name of Modi Health Care at Baba Tarana Road and the name of his firm is Chhavi Associates. The petitioner approached him and posed himself as a BMS doctor having good knowledge of medicines. The complainant engaged him as a servant with him and he started selling medicines in the shop of the complainant. Subsequently, the petitioner introduced co-accused Varun Kumar to the complainant as supplier of medical surgical items and on that pretext, they accepted huge amount from the complainant. Thereafter, neither the medical equipments were supplied to the complainant nor his money was returned. During investigation, the petitioner did not join the investigation and thus, his warrant of arrest were got issued by the police and when he was not arrested, he was got declared proclaimed offender vide order dated 14.07.2021.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The petitioner has not committed any offence as alleged in the FIR. Co-accused Varun Kumar @ Parth has already been granted concession of regular bail vide order dated 14.09.2020 passed by the Coordinate Bench of this Court. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is also ready and willing to join investigation.

Learned counsel for the petitioner further submits that the petitioner is not local resident of district Sonipat, therefore, he was even

not aware of registration of FIR against him. On 14.07.2021, the trial Court wrongly declared the petitioner as proclaimed person without following the mandatory procedure as laid down in the Cr.P.C. The petitioner did not receive any summons, notice or any other communication from the trial Court. Absence of the petitioner in the Court was neither intentional nor willful. The petitioner undertakes not to remain absent from the trial in future.

On the other hand, learned State counsel has vehemently opposed the present petition on the ground that the petitioner along with his co-accused Varun Kumar had cheated the complainant and committed fraud with him. In the petition filed for grant of anticipatory bail, the petitioner has given the address of Dehradun, Uttarakhand as well as address of Ahmedabad and in the petition filed for quashing of order dated 14.07.2021, the petitioner has only given the address of Dehradun, Uttarakhand. The absence of the petitioner in the trial Court was intentional. Therefore, he was rightly declared proclaimed offender by the trial Court. For thorough investigation of the case custodial interrogation of the petitioner is required.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. Furthermore, investigation is still going on in the present case. For thorough investigation of the case and to find out modus operandi of commission of the offence, the 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 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.”

Perusal of the file shows that earlier vide order dated 01.09.2022, passed by a co-ordinate Bench of this Court, the petitioner was directed to produce copies of his earlier Aadhar Card issued prior to 26.11.2021 since the Aadhar Card, which has been annexed with the petition, shows that the same had been issued on 20.11.2021, which could apparently be on account of the fact that some changes might have been made in address, name or parentage. However, the petitioner had failed to comply with the said order.

Keeping in view the facts and circumstances of the case, nature of averments, the fact that the petitioner had failed to comply with order dated 01.09.2022 and no sufficient reason has been given by the petitioner for his non-appearance before the Trial Court, the present petitions are hereby dismissed.

30.01.2023

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:

Whether Reportable:

Yes/No

Yes/No