

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

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CRM-M-30591-2023 (O&M)

Date of decision: 17.07.2023

Manmohan Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Anoop Verma, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

Mr. J.K. Khetarpal, Advocate for the complainant

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.44 dated 13.05.2023, registered under Sections 420 and 120-B IPC, at Police Station Jodhewal, District Police Commissionerate, Ludhiana, Punjab.

2. To recapitulate the facts from the FIR registered on the basis of an application submitted by the complainant-Bua Singh are that the petitioner-Manmohan Singh, his old friend, informed him that he was in touch with some officials of the Mandi Board and could get allotment of 30 shops in New Vegetable Market, Bahadur K Road, Ludhiana. Allured by the offer, Rs.1 lac each was taken from 30 persons, who were working as Commission Agents and thereafter, on receiving direction from the accused-petitioner, the complainant along with Vijay Kumar, Bhupinder Singh and his son Chetan went to the house of Lucky, son of the petitioner at Zirakpur and gave the amount in the presence of his

family members and they were assured that shops would be transferred within 4 months, failing which money will be returned. It was asserted that despite several reminders, the said promise was not kept even after expiry of one and a half year, and when a request for payment was made, the same was declined by stating that it was handed over to the higher officials.

3. Learned counsel submits that the petitioner neither represented himself to be known to any officer of the Mandi Board nor made any offer of any allotment of shops. He is a 75 year old man and suffering from various aged related ailments. He has been falsely implicated in the case, for the reason that the complainant took the money from Commission Agents by using the petitioner's name. No role has been played by him in the said transaction. The complainant had tried to implicate the whole family of the petitioner. He never took the alleged money and rather his signatures were taken on blank papers. The petitioner is ready and willing to join the investigation and will cooperate with the investigating agency.

4. On the other hand, learned State counsel assisted by the learned counsel for the complainant contends that there are specific allegations against the petitioner and his son of having taken money from the complainant and his companions amounting to about Rs.30 lakh with a promise for allotment of Mandi shops, as he was having good relations with the high ranking officers of the Mandi Board. When the complainant and his companion asked him to return the money, he threatened and abused them. He also impersonated himself to be GM Estate Paramjit Singh and GM Estate Harminder Singh, regarding which the transcription of the telephonic conversation has been produced in Court. Neither the shops were allotted nor the said amount was returned. The petitioner has also submitted an

undertaking dated 09.09.2022, in his own writing and appending his signatures thereon admitting the factum of receipt of Rs.30 lac from the complainant and that he will return the same within 10 days, a copy of which alongwith a joint agreement of even date, were also produced during the course of arguments by the learned State counsel. The investigation qua the petitioner still remains to be carried out and the money duped is yet to be recovered, for which his custodial interrogation is required. He is also likely to tamper with evidence and influence the witnesses. To eliminate the possibility of the petitioner fleeing from justice, they pray for the dismissal of the petition.

5. Heard the learned counsel for the parties.

6. A gainful reference can be made to the judgment in **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, where Hon'ble The Supreme Court has observed that, "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

7. In the case at hand, the petitioner and his son are alleged to have defrauded the complainant and other persons by taking a huge amount of Rs.30 lac from them in lieu of getting the shops allotted in the Mandi Bazar, on basis of his assertions of having relations with some high-up officers of the Department. He is also said to have impersonated as an official, transcript of telephonic conversation have been relied upon regarding the same. The petitioner is also stated to have submitted an undertaking in writing in his own hand to return the said amount. The investigation in the case is stated to be going on and his custodial interrogation is required to unearth the truth and involvement of other persons as also the amount involved of innocent persons is yet to be recovered.

8. Hon'ble The Supreme Court in **CBI vs. Santosh Karnani**, (2023) SCC Online SC 427, **Sadhna Chaudhary vs. State of Rajasthan**, (2022) SCC OnLine SC 869, **Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal and Ors.**, 2020 SCC Online SC 1089, while expounding the law on anticipatory bail relied on **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, which after due deliberation on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 held thus:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused 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;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases

of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

9. It is manifestly clear from the above that anticipatory bail is not a right that may be granted in every other case. The Court has to take into consideration all the facts and circumstances and after its utmost satisfaction, grant it only in exceptional circumstances, where all the factors and parameters are met and there is no possibility of him interfering in the path of justice.

10. Considering the judgments referred to hereinabove and the facts of the case at hand, particularly, the petitioner is alleged to have defrauded the innocent people; apprehension of him influencing and threatening the witnesses or tampering the evidence, or fleeing from justice, which needs to be warded off at this stage; the custodial interrogation of the petitioner is required for recovery of a huge amount and to discover the modus operandi, thus, this Court is not inclined to grant the concession of anticipatory bail to the petitioner.

11. In view of the forgoing discussion, the present petition being devoid

of merits is hereby dismissed.

12. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner are to be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

July 17, 2023

M.Kamra

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