

CRM-M-34773-2022 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34773-2022 (O & M)

Date of decision:29.03.2023

Mukesh Kumar

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Dr. Anmol Rattan Singh Sidhu, Sr. Advocate,
with Mr. Pratham Sethi, Advocate,
for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

Mr. A.S. Pannu, Advocate,
for the complainant.

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.0060 dated 07.06.2018 under Sections406, 420, 120-B IPC registered at Police Station City Jalalabad, District Fazilka.

2. The present FIR came to be registered at the instance of the District Magistrate, Markfed, Punjab on an application moved by him before the Senior Superintendent of Police, Fazilka, where a request was made for the registration of an FIR for embezzlement of paddy supplied for custom milling. As per the allegations, the petitioner was the proprietor of M/s P.M. Industries (Rice Miller) Jalalabad and the said firm had been supplied 67187.625 quintals of paddy for custom milling in the year 2017-18 and a

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specifications laid by the Government of India. The said firm had to supply rice to FCI on or before 30.05.2018 but during the course of physical verification by a Committee formed by the District Manager, Markfed, Fazilka, a shortage of 15155 bags of paddy crop for year 2017-18 was found and only 2000 bags of substandard rice in unstandard weight were found not in a specification of the norms of the FCI. Thus, the proprietor of the firm had embezzled paddy supplied for custom milling for the year 2017-18 and was liable to pay Rs.1,01,84,223/- to Markfed.

3. The learned counsel for the petitioner contends that the department had sent an application to the Deputy Commissioner, Fazilka for the attachment of the properties of the firm of the petitioner, consequent to which, the properties were attached. Since the sentence which could be imposed upon the petitioner was upto 07 years, the Courts were required to satisfy themselves of the compliance of Section 41/41-A of the Criminal Procedure Code, 1973 before seeking the arrest of the petitioner. In fact, no case for custodial interrogation of the petitioner was made out since at an earlier stage, a cancellation report had been prepared and it is only subsequently that the challan was sought to be filed. He, therefore, prays for the grant of concession of anticipatory bail to the petitioner.

4. The learned counsel for the State, on the other hand, while relying on the reply dated 26.08.2022 contends that, initially, a cancellation report had been recommended to be prepared. A report in that regard was sent to the I.G. Ferozepur Range, Ferozepur, who ordered the conducting of a further investigation and the arrest of the accused. An application was moved by the petitioner, consequent to which, an SIT was constituted which

found that the petitioner-accused was adopting delaying tactics to prolong

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the matter and recommended the conclusion of the investigation in the present FIR. The petitioner moved another application to the DGP, Punjab. An enquiry was conducted by the Superintendent of Police (Inv.) Fazilka and it was recommended to obtain legal opinion pertaining to the matter. The D.D.A. Legal, Fazilka opined that the case file be sent to the DIG, Ferozepur Range, Ferozepur. Thereafter, the matter was enquired into through the Superintendent of Police (Inv.) Fazilka, who recommended an effective investigation and presentation of the challan against the petitioner. He, therefore, contends that multiple efforts have been made by the petitioner by filing one application or the other to delay the conclusion of the investigation. Even before this Court, as the Court was not inclined to grant the concession of anticipatory bail, a statement was made that the petitioner wished to explore the possibilities of a compromise on account of which his arrest had been stayed. Despite the said fact, no compromise could be effected as the petitioner was unwilling to make the payment. It is, therefore, the case of the State that the serious allegations levelled against the petitioner coupled with his conduct of moving repeated applications for reinvestigation and thereafter undertaking to effect a settlement and backing out, did not entitle him to the grant of concession of anticipatory bail.

5. The learned counsel for the complainant contends that the conduct of the petitioner did not entitle him to the grant of anticipatory bail. He had moved repeated applications for reinvestigation and on an undertaking given by him, his arrest has been stayed to explore the possibilities of a settlement. However, he had refused to make any payment.

Since the respondent-complainant was a Government department, the

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defalcation of such a huge amount of money by the petitioner did not entitle him to the grant of anticipatory bail.

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

7. The allegations levelled against the petitioner are extremely grave. The paddy supplied to his rice mill has been misappropriated to the extent of Rs.1,01,84,223/-. After the registration of the FIR, he has moved multiple applications for reinvestigation and is, therefore, delaying the conclusion of the investigation on one pretext or the other. Even before this Court, initially, his arrest had not been stayed on his statement that he wished to explore the possibility of a settlement because of which the matter was referred to the Mediation and Conciliation Centre of this Court to explore the possibility of a compromise. However, no amount of money is forthcoming on the part of the petitioner and he has been adopting delaying tactics on one pretext or the other.

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

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Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we 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***

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interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

9. In view of the aforementioned discussion, not only is the petitioner not entitled to the grant of the concession of anticipatory bail on account of the seriousness of the allegations, but his custodial interrogation is certainly required to take the investigation to its logical conclusion as also to ascertain as to whom has the paddy supplied by the complainant to the petitioner’s mill been further sold.

10. Therefore, I find no merit in the present petition and the same is dismissed.

(JASJIT SINGH BEDI)
JUDGE

March 29, 2023
sukhpreet

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