

**101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-33979-2023 (O&M)****Date of decision : 17.07.2023****Chhinderpal Singh****.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :- Mr. Vishal Thakur, Advocate
for the petitioner.***********RAJESH BHARDWAJ, J.**

This is the second petition filed by the petitioner for grant of anticipatory bail in case FIR No.0046 dated 06.05.2023 under Sections 409, 120-B of IPC, registered at Police Station Sadar Raikot, District Ludhiana Rural.

Adumbrated facts of the case are that the petitioner was working as SDO in the PSPCL. On the basis of complaint No.999-PC-1 dated 04.04.2023 submitted by Daljit Singh J.E., Sub Division Bassian, inquiry was conducted and the same along with inquiry report was received from DPO Jagraon. There were allegations of committing fraud by PSPCL Workers Distribution Division under Sub Division with the department. It was alleged that goods worth about 7.30 crores had been withdrawn from Jagraon Store of PSPCL by Engineer Daljit Singh JE posted at Sub Division Bassian. It was further alleged that the PSPCL worker embezzled the public fund wherein Daljit Singh JE, Ajitpal Singh Lineman, Gurwinder Singh C.H.B. worker and Driver (private vehicle) Mustaq Ali were included. The total goods worth 7.30 crores had been

withdrawn by Daljit Singh JE, out of which, 3.84 crores of goods had been withdrawn under GSC category. It was further alleged that from the Office of Engineer Chhinder Pal Singh (AAE) being Incharge of Sub Divisional Office, Bassian, 3.84 crores worth goods under GSC category had been withdrawn in very large quantity. It was alleged that massive loss has been caused to the department by misappropriation of the material worth Rs.6,73,74,650/- and hence, FIR be registered against the officials as alleged in the preliminary inquiry. On the basis of same, the FIR was registered and investigation commenced. Apprehending arrest, the petitioner approached the Court of learned Additional Sessions Judge, Ludhiana praying for grant of anticipatory bail. However, after hearing both the sides, learned Additional Sessions Judge, Ludhiana declined the same vide her order dated 17.05.2023. Aggrieved by the same, petitioner approached this Court on the earlier occasion by way of filing CRM-M-27130-2023. However, after hearing arguments at length, the same was allowed to be dismissed as withdrawn by this Court vide order dated 29.05.2023. Thereafter, the petitioner again approached the Court of learned Additional Sessions Judge, Ludhiana by way of filing the second petition for the grant of anticipatory bail but learned Additional Sessions Judge, Ludhiana again declined the petition filed vide her order dated 05.07.2023. Thus, the petitioner has again approached this Court by way of filing the present petition.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in this case. He has contended that the moment petitioner came to know about the misappropriation of the

amount committed by Engineer Daljit Singh, Ajitpal Singh etc., he wrote a letter to the Station Officer of Anti Power Theft, PSPCL. He has further submitted that petitioner was working with Additional Charge of Sub Division, Bassian. He has submitted that the complicity if any was of the co-accused, and the petitioner was not responsible for the alleged embezzlement. He has submitted that as nothing was entrusted to the petitioner, thus, no offence under Section 409/120-B of IPC is made out against him. He submits that the entrustment is admittedly was to Engineer Daljit Singh who had been arrested in this case. He has submitted that no case for the custodial interrogation is made out against the petitioner and thus, he deserves to be granted anticipatory bail.

I have heard counsel for the petitioner and perused the record.

Evidently, the present FIR has been lodged on the basis of preliminary inquiry where *prima facie* complicity of the petitioner was established in this case. The petitioner was working on the post of SDO and had the responsibility pertaining to the goods released to Sub Division, Bassian. He had the responsibility for the goods which were taken by Junior Engineer Daljit Singh. It has been mentioned in the report that the petitioner took no account from JE Daljit Singh as 700 work of SRs and 190 work of gate pass had been presented by SDO Darshan Singh, Bassian which were sent to Sub Store, Jagraon from 01.10.2021 to 21.10.2023 by Daljit Singh JE to Sub Store Jagraon. In the preliminary inquiry, the statement of the relevant witnesses were recorded and the *prima facie* complicity of the petitioner and the co-accused were established. It was found that accused Daljit Singh JE, Ajitpal Singh

Lineman and Chhinder Pal Singh SDO in connivance with each other had

withdrawn the electric goods worth Rs.5,65,37,355/- from the outlet store of PSPCL, Jagraon and misappropriated the same. As per facts of the case, Daljit Singh JE has been arrested and the investigation is under progress. Needless to say that a massive public amount has allegedly been misappropriated by the petitioner and the co-accused. The investigation is at threshold. Counsel for the petitioner has miserably failed in convincing this Court on the maintainability of the petition as well as on the merits of the case.

Admittedly, the petitioner had already approached this Court by way of CRM-M-27130-2023 but after arguing at length, the same was allowed to be dismissed as withdrawn vide order dated 29.05.2023. Thereafter, he again approached the Court of learned Additional Sessions Judge, Ludhiana but failed in getting the anticipatory bail and thus, again approached this Court by way of present petition.

In the facts and circumstances of the case, this Court finds that neither the petitioner has a case on the maintainability of the second petition nor he has a case on merits.

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.

Weighing the facts of the case on the anvil of the law settled, it is apparent that the present FIR has been lodged on the basis of the preliminary inquiry where the complicity of the petitioner has been *prima facie* found. The investigation is at threshold. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

The Hon'ble Supreme Court in ***G.R. Ananda Babu Vs. State of Tamil Nadu, 2021(1) RCR (Criminal) 843*** has held that successive anticipatory bail applications ought not to be entertained on specious ground of 'Changed Circumstances'.

In view of the overall facts and circumstances of the case, the petitioner do not qualify for the grant of anticipatory bail and the same is hereby dismissed on both counts i.e. on maintainability being second petition as well as on merits. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

17.07.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No