

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

103

CRM-M-34992-2023

Date of decision: 25.07.2023

Amandeep Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Talwinder Singh, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG, Punjab

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 of FIR No. 164 dated 15.07.2022, registered under Section 408 of the Indian Penal Code, at Police Station Sidhwan Bet, District Ludhiana Rural.

2. The facts in brief, the FIR was registered by the complainant-Atul Gambhir, proprietor of M/s Jagtar Filling Station, Jagraon against the petitioner, Amanpreet Singh and co-accused Harmail Singh alleging that they have been working on his petrol pump for the last about 7-8 years and were responsible for handling all cash transactions during their employment. During February and March 2020, the petitioner deliberately made incorrect cash sale entries of petrol in his own hand. The complainant, trusting the accuracy of these entries, recorded them in his own register. In March 2020, a sales officer conducted a visit at the

petrol pump and discovered the presence of incorrect cash sale entries. Upon further enquiry, both the accused, admitted their wrongdoing and accepted responsibility for the misappropriated funds, amounting to a total of Rs. 5,70,000/- and agreed in writing to return the same. The petitioner specifically agreed to repay Rs. 2,50,000/-. It also transpired that the petitioner had also misappropriated an amount of Rs. 62,000/- from another firm M/s Gambhir Trading, regarding sale of Feed Bags, which he had initially projected the sale on credit but later on received payments from the customers but did not deposit with the employer.

3. Learned counsel for the petitioner contends that the complainant had not paid him the salary for 7 months and when the petitioner asked for it, he has falsely implicated him. Infact the complainant himself is committing illegalities and irregularities in his business. He used to mix water in the petrol which was recorded in his mobile phone, which the complainant snatched and broke. The petitioner is ready and willing to join the investigation as and when required by the investigating agency.

4. *Per contra*, learned State counsel assisted by the learned counsel for the complainant contends that the petitioner was working as a Manager at the Petrol Pump and handled all the cash that was received from the customers. During investigation the entries made by him in the register have been found to be incorrect. An amount of Rs.5.7 lakhs stands misappropriated and the petitioner has himself admitted to the embezzlement and paid a part of the above amount, so as to settle the issue. However, a major part of the amount is yet to be recovered, for which his custodial interrogation is required and the entire truth unearthed. He is also likely to tamper with evidence and influence the witnesses. To ward off the

possibility of the petitioner fleeing from justice, the State counsel prays for the dismissal of the petition.

5. Heard the learned counsel and perused the file.

6. Hon'ble The Supreme Court in the case of **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, 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 in hand, there are specific allegations of cheating and defrauding the complainant by misappropriation of a huge amount by the petitioner, who was working as a Manager at the Petrol Pump. There appear to be some writings also by him to repay the amount, a part of which he returned. The investigation is at a nascent stage and the truth of the matter is still to be revealed as regards the modus operandi and involvement of other persons. Prior to this

incident also there are similar instances of the petitioner having allegedly misappropriated funds.

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.

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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. In State represented by the C.B.I. vs. Anil Sharma, 1997(4) R.C.R. (Criminal) 268, Hon'ble The Supreme Court had observed that in cases where serious allegations have been alleged and the truth needs to be elicited from the accused, the same can only be done through the custodial interrogation as compared to questioning a suspect, who is already on anticipatory bail.

11. Considering the judgments referred to hereinabove and the facts of the case as they speak for themselves, an element of criminality cannot be ruled out at this stage and the allegations being of such nature, the permission to join the investigation with a protective umbrella of pre-arrest bail will hamper the thorough and effective investigation to discover the modus operandi and elicit the truth, that coupled with the apprehension of the petitioner influencing and threatening the witnesses or tampering with the evidence, or fleeing from justice, this Court is not inclined to grant the concession of anticipatory bail to the petitioner.

12. In view of the foregoing discussion, the present petition being devoid of merits is hereby dismissed.

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

(AMAN CHAUDHARY)
JUDGE

25.07.2023

Mehak

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