IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-36320-2023

Date of Decision:-11.09.2023

Sunil Kumar Gupta.

......Petitioner.

Vs.

State of Haryana.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Jatin Raheja, Advocate for the Petitioner.

Mr. Rajiv Goel, Deputy Advocate General, Haryana.

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JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.112 dated 10.03.2023 under Sections 406, 420 and 120-B IPC registered at Police Station Israna, Panipat.

2. The present FIR came to be registered at the instance of complainant-Tejbir Singh against Manoj Verma @ Manoj Kumar, Shubham Birla, Varun Kumar, Aman Sharma, Sunil Kumar Gupta (petitioner), Jatin Arora, Krishna Gopal Sharma and Himanshu Saxena. As per the allegations the accused had formed a company in the name of M/s Pay Way I.T. Solutions Pvt. Ltd situated at 231/233, Pacific Business Park, Sahibabad, Gaziabad (U.P.). They would take a sum of Rs.1,15,000/- from an individual to become a member of the company. After investing the members were given target per ID. Accordingly, the member would be paid Rs.1700/- per 100 likes per day and a 01 year assurance was given. The complainant had transferred an amount of Rs.20,40,235.50/- into the bank accounts of the company along with 20 IDs. An assurance had been given that 27 more IDs would be made for him and he needed to pay a an amount in cash. Thereafter a sum of Rs.2,95,800/- had been returned back to him till 17.02.2017. Even after that he (complainant) had been collecting money

and had given Rs.4,60,000/- to Manoj Verma on 29.12.2016, Rs.4,60,000/- Manoj Verma on 30.12.2016, Rs.2,30,000/- to Shubham Birla on 3.1.2017, Rs.4,60,000/- to Varun Gupta on 06.01.2017, Rs.3,45,000/- to Aman Sharma on 02.02.2017 and Rs.5,75,000/- to Aman Sharma on 07.02.2017. However, the accused stopped giving him money and had stopped attending to his phone calls. When he (complainant) had gone to the company's office he was told that full payment would be made to him later. After the same was not done and on trying to contact the accused, they were found to be untraceable. Thus, he had been cheated of an amount of Rs.48,00,235/-.

Pursuant to the registration of the FIR, the investigation was started and it was found that the accused had opened two offices on rent in the name of M/s Pay Way I.T. Solutions Pvt. Ltd at B Block, Pacific Business Park, Sahibabad, Ghaziabad, U.P. having bank account no.03410110019450 of UCO Bank, GT Road, Panipat and Account No.65236192010 of State Bank of Patiala (presently State Bank of India). It was revealed that accused Manoj Verma @ Manoj Kumar, Shubham Birla, Varun Gupta (son of the petitioner) and Aman Sharma had demanded Rs.25,30,000/- from the complainant from his village and Rs.20,40,235.50/- had been transferred through RTGS into the bank account of the accused company thereby duping the complainant of an amount of Rs.45,70,235.50/-.

3. The Counsel for the petitioner contends that petitioner has no role to play in the alleged occurrence. No amount had been transferred in to the bank account of the petitioner. He was never a director or an employee of the accused company. In fact he had been implicated as he was the father of Varun Gupta one of the accused/director. Even otherwise, there was an unexplained delay of 06 years in the registration of the FIR which clearly established that no criminal offence was made out and the allegations would constitute a civil dispute at best. AS the petitioner was ready and willing to join investigation and no recovery was to be effected from him he was entitled to the concession of anticipatory bail.

4. The Counsel for the State on the other hand has filed a Status Report in the shape of affidavit dated 8.09.2023 of Mr. Krishan Kumar, DSP, Panipat in court today. The same is taken on record. He contends that there were specific allegations against the petitioner that he along with his co-accused had cheated the complainant by extracting money from him.

During the course of the investigation it transpired that the petitioner was the father of Varun Kumar Gupta and had a hand in running the company along with his son and the other accused. Not only was the recovery of Rs.45 lacs to be effected, the investigation was to be taken to its logical conclusion for which the custodial interrogation of the petitioner was required. There were two other cases pending against the petitioner with similar allegations bearing FIR No.177 dated 11.04.2017 under Sections 4-06, 420, 467, 468, 471, 120-B IPC P.S. Link Road, Ghaziabad, U.P. and FIR No.283 dated 10.06.2017 under Sections 406, 420, 467, 468, 471, 120-B IPC P.S. Link Road, Ghaziabad, U.P. As the offence was prima facie established from the investigation conducted so far the petitioner was not entitled to the grant of anticipatory bail.

5. I have heard learned Counsel for the parties.

6. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***'', has 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.*
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> *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 interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail"***.

7. Admittedly, the petitioner is duly named in the FIR along with the other co-accused. During the course of investigation it was revealed that the petitioner along with the other co-accused was actively managing the affairs of the accused company. In addition, the prima facie culpability of the petitioner can also be established from the fact that there are two other cases of similar nature pending against the petitioner. As per allegations levelled the accused had set up a business to entrap persons in order to extort money from them in furtherance of which a sum of Rs.48,00,235/- had been extracted from the complainant. As allegations levelled are grave the offence is prima facie established and the investigation is to be taken to the logical conclusion no case for the grant of anticipatory bail is made out. Therefore, the present petition stands dismissed.

8. However, observations made hereinabove are only for the purpose of deciding the anticipatory bail application and shall not have any bearing on the merits of the case.

(JASJIT SINGH BEDI)
JUDGE

September 11, 2023
Vinay

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***