

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

**CRM-M-36690-2023**

**Date of Decision:-31.08.2023**

**Rahul Khan.**

.....Petitioner.

Vs.

**State of Haryana.**

.....Respondent.

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

Present:- Mr. Ashish Gupta, Advocate for the Petitioner.

Mr. Rajiv Goel, Deputy Advocate General, Haryana.

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**JASJIT SINGH BEDI, J.(ORAL)**

The prayer in the petition under Section 438 Cr.PC is for grant of anticipatory bail in case FIR No.41 dated 25.07.2022 under Sections 419, 420, 204, 120-B IPC and Section 66-D of Information Technology Act 2008 registered at Police Station Cyber Crime Gurugram, District Gurugram.

2. The brief facts of the case are that one Dr. Bibek Banerjee filed a complaint stating that unauthorised charges had been made on his HDFC Bank Credit Card on the pretext of online alcohol purchases by some fraudsters. His Credit Card was bearing number 4375 46xx xxxx2772. He further provided the details of fraudsters i.e. Website URL:- <http://jagadishwineshopgurgaon.com>. The numbers of the fraudsters were +91 9365855466 and +91 9827584038, Transaction Date was 24.7.2022 and the Merchant name was PAYTM RENTAL. The transaction amount was Rs.93,380/- and Rs.11,717.47/-. Legal action was sought.

During the course of the investigation, the record of the

PAYTM company was obtained. It was found that the money obtained through fraud has been transferred in Axis Bank Account no.922010030617548. The record of the Axis Bank was obtained and it was found that the money of the fraud had been withdrawn by way of ATM and POS. The record regarding the G Mail IDs used by the accused were obtained.

Secret information revealed that the names of two of the accused were Akib Javed and Taslim. They were arrested on 27.07.2022 from village Jurhera, District Bharatpur (Rajasthan). 05 Mobile Phones with the Vodafone Idea Sim Cards along with fake Ids were recovered from Taslim. One Mobile Phone was recovered from Akib Javed. Pursuant to their police remand Akib Javed also got recovered a fake SIM registered in the bank account, ATM Card and Rs.20,500/- of his share. He also got recovered 07 SIM Cards obtained on fake IDs. Accused Taslim got recovered the mobile phone used in the present occurrence and Rs.19,500/- of his share.

Accused Sabir was arrested on 30.07.2022. He got recovered 02 mobile phones used in the present occurrence and Rs.7200/-.

Another accused Akib was joined in the investigation on 26.03.2023 and got recovered an amount of Rs.21,000/- . He was released in terms of the judgment of Hon'ble Supreme Court in Arnesh Kumar Vs. State of Bihar. During the investigation it came to light that the Axis Bank Account No.922010030617548, mobile no.9365855466 and 9827584038 and SIM Card No.8768018115 (registered in the said Axis Bank Account) were provided to the accused by the petitioner-Rahul Khan. Notices under Section 41-A Cr.PC were issued to him on 31.10.2022, 18.11.2022, 29.11.2022 and 04.03.2023 but he did not join investigation. Because of the

non appearance of the petitioner proclamation proceedings are pending against him along with another accused Asgar.

3. The Counsel for the petitioner contends that he has not been named in the FIR but only in the disclosure statement of his co-accused. No case for custodial interrogation was made out as he was ready and willing to join investigation and cooperate with the same.

4. The Counsel for the State on the other hand while referring to the reply dated 24.08.2023 contends that the petitioner had provided the Axis Bank Account No.922010030617548, mobile no.9365855466 and 9827584038 and SIM Card No.8768018115 (registered in the said Axis Bank Account) to the other accused. Thus the petitioner was a conspirator who had connived with the arrested accused to commit the offence in question. His custodial interrogation was necessary not only to recover the amount which had come to his share but also to obtain information as to the modus operandi adopted by him. The petitioner was also a habitual offender having been involved in FIR No.44 dated 5.8.2022 under Sections 419, 420, 204, 120-B IPC and Section 66-D IT Act P.S. Cyber Crime East, Gurugram in which case also proclamation proceedings were pending. Therefore, as the offence had been prima facie established and the investigation was to be taken to its logical conclusion the petitioner did not deserve the concession 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.*

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

7. In the instant case, the investigation has clearly revealed the role played by the petitioner. He had permitted the use of Axis Bank Account No.922010030617548, mobile no.9365855466 and 9827584038

and SIM Card No.8768018115 (registered in the said Axis Bank Account). The proceeds of the crime had come into this account. Therefore, apparently, the petitioner is one of the main conspirators who had facilitated the commission of the offence and therefore offence prima facie stands established against him. Even otherwise, the petitioner is a habitual offender having been involved in one other case of a similar nature wherein also, proclamation proceedings are pending. Therefore, as the offence is prima facie established and the investigation has to be taken to its logical conclusion, no ground for the grant of anticipatory bail is made out.

8. In view of the above, I find no merit in the present petition and the same stands dismissed.

9. 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

August 31, 2023  
Vinay

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |