

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

CRM-M-43439-2022 (O&M)

Date of decision: 28.04.2023

Inderjit Singh

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Bharat Julka, Advocate for the petitioner

Mr. IPS Sabharwal, DAG Punjab

Mr. Sherry K. Singla, Advocate for respondent No.2

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 FIR No.202 dated 04.08.2022, registered under Sections 406, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, at Police Station Division No.5, Ludhiana, District Ludhiana.

2. To recapitulate, facts as per the FIR registered on the basis of the complaint moved by Gaurav Malhotra, Regional Head Sales ICICI Bank Branch, Feroze Gandhi Market, Ludhiana are that the petitioner-borrower and Jaspreet Singh, co-borrower obtained a vehicle loan from the Branch for the purchase of vehicle make Mercedes Benz bearing registration No.PB10-R-0090 at the tune of Rs.38,47,500/-. From February 2019 onwards, they failed to make the repayment towards the loan amount. The bank had sent vehicle production notices to them and also the reminder notices but they failed to produce the same. Thereafter, the bank obtained B- Extract from the RTO as per which the owner of the said vehicle

is Jaspreet Singh and the same is hypothecated with AU Small Finance Bank Ltd.

Thus, they with dishonest and fraudulent intention of cheating in connivance/collusion with unknown, unscrupulous persons had availed vehicle loan from ICICI Bank on the specific condition that they will create hypothecation of the bank on the said vehicle and submit the proof of the same within 60 days, which they did not duly fulfill.

3. Learned counsel for the petitioner would submit that the petitioner has been falsely implicated in the case. He was a mere guarantor to the loan raised by his son, who is the co-accused. He had signed some blank papers upon request made by his son namely Jaspreet Singh and on the insistence of the Bank staff that there would be no liability of guarantor in vehicle loan. The petitioner had already disinherited his son. He is ready and willing to join the investigation.

4. *Per contra*, learned State counsel assisted by the learned counsel for the complainant contends that there are specific allegations against the petitioner and his son of having defrauded the bank. He has committed serious offences of cheating, forgery and criminal breach of trust. The custodial interrogation of the petitioner is required for the recovery of the entrusted vehicle. The petitioner is also likely to tamper with evidence and influence the witnesses. The son of the petitioner has fled the country. Therefore, it would not be far fetched to consider the accused-appellant a flight risk. To eliminate the possibility of him fleeing from justice, the State counsel prays for the dismissal of the petition.

5. Heard.

6. In **Jai Parkash Singh vs. State of Bihar** (2012) 4 SCC 379, Hon'ble The Supreme Court while relying on the judgments in the cases of **D.K. Ganesh Babu vs. P.T Manokaran** (2007) 4 SCC 434, **State of Maharashtra vs. Mohd.**

Sajid Husain Mohd. S. Husain, (2008) 1 SCC 213, and Union of India vs.

Padam Narain Aggarwal (2008) 13 SCC 305, held thus:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record.

7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:

“438. Direction for grant of bail to person apprehending arrest.-

(1) Where any person has reason to believe that he may be arrested on an 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.”

XX

XX

XX

8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation.

XX

XX

XX

13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

XX XX XX

21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR

had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required.”

7. Herefor, it is apposite to make a reference to the status report. According to the same, a loan was sanctioned by the ICICI Bank for purchase of Mercedes Benz on 31.07.2015 and in August 2016, the petitioner obtained a top-up loan of Rs. 10 lacs on the said car. The petitioner in connivance with his son had thus raised a loan amounting to Rs. 48,47,500/- from ICICI Bank on the said car bearing No.PB-10R-0090. They prepared fake NOC dated 15.06.2016 and presented the same before RTA and got removed the hypothecation from the said registration certificate of the car. Thereafter, Jaspreet Singh-son of the petitioner purchased an Activa scooter and got it registered under the same registration No. as was previously of the car and again obtained a loan of Rs. 24 lacs from AU Small Finance Bank Ltd. by getting the Activa hypothecated, while getting the car registered under a new number i.e. PB-10FH-0045.

8. 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.”

9. In the case in hand, there are specific allegations against the petitioner of having committed a very serious crime in conspiracy with his son causing a huge loss to the financial institution by forging and fabricating the documents as well as the vehicles. Therefore, the custodial interrogation of the petitioner is required for thorough and effective investigation of the crime committed, to discover the modus operandi. There is apprehension expressed of the petitioner fleeing from justice being a flight risk as his son has also fled the country. There is also apprehension of tampering of evidence at his hands and influencing the witnesses.

10. In view of the forgoing discussion, the present petition being devoid of merits is hereby dismissed.

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

(AMAN CHAUDHARY)
JUDGE

April 28, 2023
M.Kamra

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