

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

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CRM-M-47100-2022 (O&M)

Date of decision: 07.08.2023

Manoj Kumar

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. U.K. Agnihotri and
Mr. Anshul Agnihotri, Advocates for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioner in case FIR No.56, dated 02.03.2022 (Annexure P-1), registered under Sections 120-B, 409, 420, 467, 468, 471 (Section 201 added later on) at Police Station Badhra, District Charkhi Dadri.

2. Brief facts of the case are that emerge from the complaint filed by BDPO, Badhra are that co-accused Mukesh Kumar, Gram Sachiv in collusion with other person was found to have misappropriated an amount of Rs. 1,11,52,000/- by forging signatures of the complainant on several cheques. The co-accused confessed that the petitioner received a sum of Rs. 20,61,483/- for supplying material to the panchayat and he taking a commission of Rs. 4-5 lac. Out of the same amount, the petitioner returned Rs. 3,45,000/-. Further he produced bills in order to prove the work done by his firm, which were found to be forged and fabricated. This led to lodging of the FIR.

3. Learned Counsel contends that the petitioner is not named in the FIR. He alleges false implication. The petitioner's firm had supplied the material to the Gram Panchayats, for which the receipt of delivery was also shown to the investigating agency. The allegations of misappropriation etc. are against the co-accused, who is the Secretary of Gram Panchayat, who has forged the cheques of the complainant-BDPO and is already in judicial custody. Though, there is one more FIR registered against the petitioner, wherein he is on bail. He is ready and willing to join and cooperate with the investigating agency.

4. Learned State counsel opposes the prayer on the ground that custodial interrogation of the petitioner is required inasmuch as there are serious allegations of having received an amount of Rs.20,61,463/- from the accounts of village Panchayats in his firms, however, no material was supplied. The complainant had filed a complaint before the Block Development and Panchayat Officer, Badhra, District Charkhi Dadri. The petitioner is involved in two more cases i.e. FIR No.55, dated 02.03.2022, registered under Sections 409, 420, 467, 468, 120-B IPC and Sections 7 & 13 P.C. Act at Police Station Badhra, District Charkhi Dadri as well as FIR No.55, dated 29.03.2022, registered under Sections 420, 467, 468, 471 & 120-B IPC at Police Station Jhoju Kalan, District Charkhi Dadri, wherein the allegations against him are of similar in nature involving an amount of Rs. 28 lakhs and Rs.23 lakhs respectively. There is apprehension of the petitioner influencing the witnesses and also tampering with evidence. The investigation is in progress. The bills relied upon by the petitioner were found to be forged and fabricated. Thus, he prays for the dismissal of the present petition.

5. Heard the learned counsel for the parties and perused the file.

6. It would be apposite to refer to para No.3 of status report filed by the State, which reads thus:

“3. That during investigation it has been found that accused/petitioner Manoj Kumar is owner of M/s Balaji Concrete Products, Kadma and his firm used to supply cement tiles in construction work of village panchayats. Co-accused Mukesh Kumar prepared bogus records of panchayat works in village Dohka Moji, Rampura and Kiskindha and in collusion with petitioner Manoj Kumar transferred Rs. 20,61,483/- from the accounts of village Panchayats in the accounts of petitioners firm namely M/s Balaji Concrete Products, Kadma, without doing any actual work on ground or supply of any product by the petitioners firm. It is further submitted that neither any work was done by the petitioners firm nor any material was supplied to the panchayats as the allege work/material mentioned in the bills supplied by the petitioners firm was not found carried out at the spot. The bill relied upon by the petitioner were found to be forged and fabricated one as the same were not verified by the BDPO, Badhra. All the relevant records pertaining to allege work was fabricated by co-accused Mukesh and forged signatures were made on cheques to transfer the amount in the firms with their collusion including the firm owned by the petitioner. It is further submitted that a cheque No. 628152 dated 09.02.2022 having forged signatures was drawn in favour of petitioners firm Balaji Concrete Products from the accounts of Gram Panchayat Rampura bearing No. 1219000100542304 on 09.02.2022, amounting Rs. 3,45,000/-. However, the petitioner deposited the said amount in the accounts of village Panchayat, yet an amount of Rs.17,16,483/- paid to the petitioners firm on the basis of bogus record and forged cheques for various works is still to be returned by the petitioner.”

7. 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.”

8. As per the allegations in the FIR, the petitioner in collusion with the Secretary of Panchayat, has defrauded and misappropriated the government funds amounting to Rs. 20,61,483/-. No material was supplied, for which the said amount had been credited to the account of the firm of the petitioner. The bills placed on record by the petitioner to prove his innocence, were found to be forged and fabricated, as per the investigation conducted by the police. As recorded in the order passed by the trial Court dated 02.03.2022, co-accused Mukesh, Gram Sachiv, has stated that he conspired to dupe the public money and received around Rs.5 lac as his commission. The return of the part payment of Rs.3,45,000/- received by the petitioner, out of the above amount, which was transferred to his firm's account, amounts to an admission. The remaining amount still remains to be recovered. Custodial interrogation of the petitioner is required to find out the other persons involved in trying to usurp the funds of the Panchayat.

9. 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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10. 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.

11. 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.

12. Considering the facts and circumstances of the case and the judgments referred to above, 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, recovery is yet to be effected and also that he is involved in two more FIRs, this Court is not inclined to grant the concession of anticipatory bail to the petitioner.

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

14. 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

07.08.2023
Ankur

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