

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47805-2022
Reserved on: 13.01.2023
Pronounced on: 18.01.2023

Balwinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashish Nagar, Advocate,
for the petitioner.

Mr. Virat Rana, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
122	15.11.2019	Kotwali, Nabha, District Patiala	406, 420, 120-B IPC

1. The petitioner apprehending arrest in the FIR captioned above, on the allegations of cheating, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 8 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offences	Police Station
1.	25	11.05.2015	406, 419, 420, 465, 467, 468, 471 IPC	Mullapur
2.	29	28.01.2014	420, 467, 468, 471 IPC	Chandi Mandir
3.	178	03.12.2015	420, 468, 471, 120-B IPC	Kurali (Ropar)

3. Petitioner's counsel seeks bail on parity with Kulvir Singh and argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. While opposing the bail, the State's counsel contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

5. In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

6. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

7. It would be appropriate to refer to para 3 of the reply affidavit filed by the DySP, Patiala, which reads as follows:

"3.That the brief facts of the case are that the above noted case was registered at Police Station Kotwali, Nabha on filing application No. 6938 dated 04.09.2019 by Kuldeep Singh son of Nirbhai Singh r/o Dashmesh Colony Nabha District Patiala for registration of case against (1) Hajura Singh son of Lachhman Singh and (2) Kulveer Singh son of Hajura Singh r/o Village Kholmel Tehsil and District Panchkula Haryana now resident of Dashmesh Shaw Mill Dhanas, Chandigarh, the (3) petitioner- Balwinder Singh son of Hans Raj resident of Jainti Majra (4) Jaspal Singh, son of Hari Singh, resident of village Karodewala Tehsil and district SAS Nagar Mohali, before the Senior Superintendent of Police, Patiala for cheating him to the tune of Rs.25 Lacs by showing a showroom at Lohgarh, Zirakpur, Mohali. The said application was marked to the Deputy Superintendent of Police, Nabha the Senior Superintendent of Police, Patiala for conducting the enquiry in the matter. Who further got conducted enquiry in the matter from the SHO, Police Station Kotwali,

Nabha. On the basis of enquiry report of SHO, Police Station Kotwali, Nabha, the Deputy Superintendent of Police, Nabha submitted his report No.784/RC/DSP/N dated 01-11-2019 to the Senior Superintendent of Police, Patiala. According to the enquiry it was found that the complainant Kuldeep Singh was introduced by the petitioner- Balwinder Singh and Jaspal Singh son of Hari Singh, r/o village Karondewala, Police Station, Mullapur to Garibdas, district, S.A.S. Nagar at the property dealer shop of Krishan Kumar Malhotra, an old acquaintance of the complainant, where the complainant was told by the petitioner (Balwinder Singh) and Jaspal Singh that they have deals for good show rooms and other properties if he wants to purchase the same. They took the phone number of the complainant and gave their number, after which both the persons started talking to the complainant on mobile phones and on 02.05.2019, the petitioner (Balwinder Singh), Jaspal Singh etc. took the complainant to Zirakpur and shown a three-storey show room in Lohgarh Zirakpur Mohali Dashmesh Colony with area of 83 square yards and said that they have entered into agreement to purchase that show room and the same is with them. After which the complainant made a deal for the show rooms with Balwinder Singh and Jaspal Singh for a sum of Rs.51,65,000/- and paid Rs. 10 lakh as cash to these persons in Nabha city in the presence of witness Kewal Singh and on 03.05.2019, the complainant got transferred Rs.7 Lacs from his account No. SBI AC NO. 85280552184 through cheque No. 902899 in the bank account No. 55152191491 of Jaspal Singh in SBI Branch Sarangpur, Chandigarh, on their asking. After that the complainant asked them to provide a photocopy of the agreement with the original owner of the showroom, then the petitioner - Balwinder Singh and Jaspal Singh stopped answering the phone calls of the complainant and put the complainant's number in the black list after which the complainant went to Chandigarh and met the petitioner-Balwinder Singh and Jaspal Singh, who asked the complainant pay another Rs. 1 lakh to provide a copy of agreement. The complainant deposited Rs. One Lac in A/C No. 55152191491 of Jasapl Singh on 29/05/2019. But again the petitioner and Jaspal Singh started putting off the matter on the one pretext or the other. Then on 20.06.2019 the complainant alongwith his know Kewal Singh son of Harmel Singh resident of village Mandaur, Nabha went to Chandigarh, where at Gopal Sweets in Sector 15 Chandigarh, the petitioner Balwinder Singh and Jaspal Singh introduced the complainant to another associate Hazura Singh son of Lachman Singh r/o Village Kholmol Tehsil and District

Panchkula Haryana. Hajura Singh told the complainant that he has to take Rs.8 lakh from the petitioner Balwinder Singh and Jaspal Singh and the agreement has been executed in his name, which is with him, and if the complainant gives him Rs.8 lakh, then he would give a copy of agreement to sell of the showroom, to which Balwinder Singh and Jaspal Singh also agreed. At this Kulveer Singh son of Hajura Singh supplied account of his father Hajura Singh Dasmesh Shaw Mill to the complainant on his mobile phone. At this the complainant transferred Rs.4 lakhs to A/C No. 049905000905 of Dasmesh Shaw Mill of Hajura Singh through RTGS No. 52019062083407005 on 20/06/2019 from his HDFC A/C No. 50200023694016 from Nabha and they told the complainant that they would come to Nabha and pay remaining amount in cash and Hazura Singh would enter into agreement with the complainant. Then Hajura Singh, Jaspal Singh, Balwinder Singh and Kulveer Singh s/o Hazura Singh came at the shop of the petitioner's Anaj Mandi Nabha and 2 lakh rupees cash was collected by Hajura Singh and they supplied Photostat copy of the registry of the showroom to the complainant. But later on did not entered into agreement to sell and on 04/07/2019, they further introduced the complainant to another person, Sheeshpal at Sector 15, Gopal Sweets, Chandigarh. Sheeshpal said that this showroom is with him and on his asking the complainant transferred Rs.1,50,000 in the account No.55152191491 of Jaspal Singh and they asked the complainant to come to Zirakpur on the next day to execute the agreement to sell but the said person did not execute agreement to sell in favour of the complainant. After which the complainant, Kewal Singh, son of Harmel Singh, a resident of village Mandaur went to Hajura Singh at his saw mill at Dhanas where the complainant told Hajura Singh, Balwinder Singh, Kulveer Singh and Jaspal Singh to take police action against them. At this on the next day to settle the matter, Hajura Singh, Jaspal Singh, Kulveer Singh and Balwinder Singh came to the petitioner's shop at Anaj Mandi Nabha and with mutual consent Hajura Singh issued three cheques to the complainant from his Punjab National Bank a/c No. 2558000100000029, i.e. cheque No.726850 dated 15/7/2019 of Rs.20 lakh, Cheque No. 726851 dated 16/07/2019 of Rs.15 lakh and Cheque No. 726852 dated 17/07/2019 of Rs.15 lakh to the complainant and asked him to wait for one month and not to deposit the cheques in the bank and in the meantime, they would return the money to the complainant in cash. Later on they did not pay the amount of the cheques and on presenting the cheques in the bank, the same were dishonored due to lack of funds

in the account, after which the complainant tried to contact the said persons on phone but they did not respond to the telephone calls. During the enquiry summons were sent to Balwinder Singh, Jaspal Singh and Hajura Singh to join in the enquiry but they did not join the enquiry. During the enquiry it was found that the petitioner Balwinder Singh, Jaspal Singh, Hajura Singh, Kulveer Singh son of Hajura Singh above noted hatched conspiracy among each other and played fraud of Rs.25 Lacs with the complainant. So on the recommendation of enquiry officer, above noted case has been registered at P.S. Kotwali, Nabha under Sections 406, 420, 120B IPC against Balwinder Singh, Jaspal Singh, Hajura Singh, Kulveer Singh son of Hajura Singh.”

8. The petitioner’s criminal history involving the allegations of similar nature and the allegations point towards the malicious intent.

9. Given the nature of allegations, custodial interrogation is required. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

10. In Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, Hon’ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

11. In State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187, Hon’ble Supreme Court holds,

[6]. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused

in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.

12. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage.

13. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

18.01.2023
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.