IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48005-2023 (O & M)
Date of decision:07.11.2023

Vikash Raj alias Vikas Raj …... Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ankur Malik, Advocate, for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Ketan Antil, Advocate, for the complainant.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.224 dated 20.04.2023 under Section 420 IPC registered at Police Station Sector 27, Sonipat (Annexure P-1) (Sections 419, 467, 468 and 471 IPC were added later on and Section 420 IPC was deleted).

2. The present FIR came to be registered at the instance of Vikas Kumar son of Ved Parkash. As per the allegations, Vikas Raj son of Raj Kumar was his (complainant's) relative. Vikas Raj son of Raj Kumar had used his (complainant's) personal and security documents and had obtained credit cards from various banks which the accused had been misusing continuously regarding which he (complainant) had also informed the concerned bank and police. For the year, 2020-2021, the accused had made transactions of Rs.12,92,596/- from RBL Bank and Rs. 12,20,711/- from ICICI Bank by using credit cards obtained on the basis of his (complainant's) documents and the said transactions were being shown in

Form 26-AS for which the Income Tax Department could make an enquiry from him (complainant). Similarly, for the year 2021-2022, there had been transactions of Rs.60,007/- from RBL Bank and Rs.37,48,189/- from the ICICI Bank which were also reflected in Form 26-AS. Therefore, it was apparent that the accused had obtained obtained advance money from the banks using his (complainant's) PAN card and other documents with an intention to cheat him.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. No loss had been caused either to the complainant or any Government agency. He was working as a Sales Executive with the Airtel company. In fact, the complainant was the petitioner's brother-in-law. They were doing some part-time business together. Due to some misunderstanding, a dispute had arisen between the petitioner and his brother-in-law/Vikas. Earlier applications with similar allegations had been moved but no offence was found to have been committed. Despite the fact that the petitioner had joined investigation, his anticipatory bail had been dismissed by the Sessions Court. Be that as it may, the offence, if any, was of a civil nature for which the complainant was at liberty to avail his remedies in accordance with law.

4. While referring to the reply dated 17.10.2023, which is already on record, the learned counsel for the State contends that during investigation, the relevant record pertaining to the credit cards was obtained from the RBL Bank and ICICI Bank. The said record revealed that while getting issued the credit cards, on the KYC application form, the petitioner had affixed his photograph while other documents such as the PAN Card, Aadhar Card and the Voter Card were of the complainant. While procuring

the credit cards, the petitioner had appended the signatures of the complainant and in the Column of permanent address, he had mentioned the address of the complainant and while in the Column of temporary address, the petitioner had mentioned his own address. As such, forged documents were prepared by the petitioner for getting issued the credit cards which were sufficient to establish the complicity of the petitioner in the present case. Numerous transactions had been made on the fraudulently issued credit cards. As there were direct and specific allegations and sufficient evidence against the petitioner and the offence was *prima facie* established, the investigation was to be taken to its logical conclusion and therefore, the petitioner was not entitled to the concession of anticipatory bail.

5. The learned counsel for the complainant contends that the petitioner is specifically named in the FIR. He had forged the documents of the complainant, had obtained credit cards from the Banks by impersonating the complainant and had made numerous transactions by using the said credit cards. The said transactions were reflected in Form 26-AS of the complainant. As the offence was *prima facie* established, the petitioner was not entitled to the concession of the anticipatory bail.

6. I have heard the learned counsel for the parties.

7. The Hon'ble Supreme Court in the case of ***'Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977',*** 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.***"

8. In the instant case, the investigation conducted so far has clearly revealed that the petitioner being the real brother-in-law of the complainant forged the documents of the complainant, obtained credit cards from the Banks by impersonating himself to be the complainant and made numerous transactions using the said credit cards. The said transactions were reflected in the Form-26-AS of the complainant. Though, an attempt was made to settle the dispute, the same has not fructified. As the offence stands *prima facie* established and the recovery of various documents including the credit cards is to be effected from the petitioner, the custodial interrogation of the petitioner is certainly necessary to take the investigation to its logical conclusion.

9. In view of the above discussion, I do not find any merit in the present petition and the same stands dismissed.

10. However, the observations made hereinabove are only for the purpose of deciding this anticipatory bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

November 07, 2023
sukhpreet

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