

CRM-M-48845-2023 (O & M)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48845-2023 (O & M)

Date of decision:04.12.2023

Karmveer (wrongly written Karamveer in the impugned order)

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sandeep Kumar Yadav, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Prateek Rathee, Advocate, for the complainant.

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.475 dated 05.07.2023 under Sections 406, 420 IPC registered at Police Station City Narnaul, District Mohindergarh.

2. The present FIR came to be registered at the instance of Sanjay son of Ramanand who stated that he was in the business of Animal Husbandry and Zimidari. Deepak son of Karmveer (petitioner) was in the business of procuring loans for customers from the banks and had got procured a loan of Rs.6,62,000/- for him (complainant) two years ago through A.U. Small Finance Bank, Narnaul because of which he (complainant) and Deepak had good relations. On 25.04.2022, Deepak

CRM-M-48845-2023 (O & M)

::2::

assured him (complainant) that he (Deepak) could procure a loan of Rs.42,00,000/- from the SBI Bank, Narnaul for Fisheries and 40% subsidy could be provided as per Government schemes. Necessary documents were obtained from him (complainant) such as Aadhar Card, PAN Card, copy of Jamabandi of the land and two blank cheques duly signed by him (complainant) bearing Nos. 216337 and 216338 of the Punjab National Bank Branch Nasibpur, Narnaul. A sum of Rs.9,96,800/- was obtained by Deepak on various pretexts. However, the loan was not advanced to him (complainant). Certain phone recordings showing that Deepak had taken the said amount, had been deleted from his (complainant's) phone. One Vikas was posing as Bank employee who spoke to him (complainant) promising that the loan would be arranged. However later, Deepak got a plain paper scribed for him (complainant) that he (complainant) had received a sum of Rs.3,00,000/-. However, only Rs.1,00,000/- was deposited in his (complainant's account). Thereafter, Deepak filled a cheque bearing No.216338 for an amount of Rs.8,00,000/- in favour of his father-Karamveer (petitioner) as beneficiary and got the same presented which came to be dishonoured. Thereafter, conversation took place between Deepak, Krishna Devi (mother of the complainant) and Rakesh (brother of the complainant) to refund the aforesaid money. In the said conversation, Deepak had admitted that the same had been taken by him. Thus, he (complainant) had been cheated.

Pursuant to the institution of the complaint, an enquiry took place in which both the parties were joined and their statements were recorded. The complainant produced a Pen Drive containing the

CRM-M-48845-2023 (O & M)

::3::

conversation between Deepak, Rakesh (brother of the complainant) and his (complainant's) mother-Krishna Devi. Deepak was clearly heard admitting that the loan would be granted and the mother of the complainant is heard demanding Rs.12,00,000/-. It also transpired that petitioner-Karamveer (father of Deepak) was hand in glove with him (Deepak) in the whole transaction as the blank cheques were filled in his name and it was he (Karamveer-petitioner) who had instituted a complaint under Section 138 of the Negotiable Instruments Act. Pursuant to the enquiry, the instant FIR came to be registered.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. In fact, the complainant had borrowed money from the petitioner and when the petitioner demanded his money, then the complainant had issued cheques in question which came to be dishonoured. On the petitioner instituting a complaint under Section 138 of the Negotiable Instruments Act, the instant FIR had been registered as a counter-blast to the said complaint. The case was based entirely on documentary evidence and nothing was recovered from the petitioner. As he was ready and willing to join the proceedings, the petitioner was entitled to the concession of anticipatory bail.

4. The learned counsel for the State alongwith the learned counsel for the complainant, on the other hand, while referring to the reply dated 14.10.2023 contend that the complainant and accused-Deepak had a good relationship on account of the fact that he (Deepak) had procured a loan for the complainant earlier. However, later, on the pretext of providing another

loan, Deepak had taken a sum of Rs.9,96,800/- alongwith various

CRM-M-48845-2023 (O & M)

::4::

documents. The loan was not procured. The cheques in question were filled in the name of petitioner-Karamveer, father of Deepak, which were presented and on being dishonoured Karamveer instituted a complaint under Section 138 of the Negotiable Instruments Act. Recordings between the complainant party and the accused side would establish the correctness of the prosecution version emanating out of the FIR. As the petitioner was an equal participant in the offence in question alongwith his son-Deepak who was absconding, his custodial interrogation was certainly needed as the offence was *prima facie* established and the investigation was to be taken to its logical conclusion.

5. I have heard the 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.

CRM-M-48845-2023 (O & M)

::5::

*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. A perusal of the reply dated 14.10.2023 would show that based

on the complaint of Sanjay son of Ramanand, a detailed enquiry took place,

CRM-M-48845-2023 (O & M) ::6::

pursuant to which the FIR in question came to be registered. It was Deepak who allured the complainant to part with a huge sum of money on the pretext of procuring him (complainant) a loan which had not been procured. Various documents and signed blank cheques had been taken on the premise of providing a loan. One of the cheques in question had been used by Deepak in conspiracy with Karamveer, his father and proceedings under Section 138 of the Negotiable Instruments Act have been initiated against the complainant. The phone recordings between the complainant party and the accused party would show that the version in the FIR cannot be doubted at least at this stage. Therefore, the offence stands *prima facie* established against the petitioner and his co-accused. Further, the investigation is to be taken to its logical conclusion as various documents and signed blank cheques are to be recovered from the petitioner and his son-Deepak. Therefore, the custodial interrogation of the petitioner is certainly required.

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

9. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application 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

December 04, 2023
sukhpreet

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