

**101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-52415-2023

Date of Decision: 30.10.2023

Harpal Singh

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. L.S. Sidhu, Advocate, for the petitioner.

Mr. Rajneesh Chadwal, Assistant Advocate General, Haryana.

Mr. Vijay Dahiya, Advocate, for the complainant.

Rajesh Bhardwaj, J. (ORAL)

The present petition has been filed under Section 438 Cr.P.C seeking the benefit of anticipatory bail to the petitioner in case FIR No.51 dated 26.4.2023 under sections 120-B, 406, 420, 467, 468, 471, 477 and 201 IPC, registered at Police Station, Jakhal, District Fatehabad.

As per factual matrix, the FIR in question was registered on the statement of Rahul son of Shamsher and others, wherein it was alleged that complainant executed an agreement to sell with the accused persons of total land measuring 23 kanals 12 marlas for an amount of Rs.24,50,000/- per acre vide agreement dated 04.01.2023. The earnest money of Rs.5 lakh was paid to the accused vide RTGS dated 03.01.2023. Thereafter, on 05.03.2023 property dealer, namely, Netar Pal and Thakar Singh had to come to receive the amount. On 06.03.2023, the complainant reached at the house and shop of the accused but it was found locked. They checked in the branch of I.D.F.C Bank, Tohana to know the information about the bank account in which they had deposited the amount in question, however, they came to

know that they have been cheated by Netar Pal and Thakar Singh in connivance with other accused persons. A request was made to take legal action against the culprits. After registration of the FIR, investigation commenced. Apprehending the arrest, petitioner approached the Court of learned Sessions Judge, Fatehabad for grant of bail, however, after hearing the parties, the same was declined vide order dated 03.10.2023. Aggrieved by the same, the petitioner has approached this Court for grant of anticipatory bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in this case. It is submitted that there is no allegation regarding any transfer of the amount to the petitioner. He has submitted that the petitioner himself is the victim of the fraud committed by Netarpal and his brother-in-law Karan Thakur by preparing the forged and fabricated agreement to sell. He has submitted that the petitioner has nothing to do with alleged fraud committed upon the complainant by the co-accused Netarpal and Karan Thakur. He has further submitted that no *prima facie* case is made out against the petitioner and nothing is to be recovered from his possession. He submits that present case is triable by a Magistrate and maximum sentence is 7 years and thus petitioner deserves to be granted bail.

Learned State counsel on instructions has opposed the submissions made by counsel for petitioner. He submits that during investigation complicity of the petitioner has been found in this case. He has submitted that recovery of Rs.31,00,000/- credited in the account of the petitioner is yet to be effected. He has further submitted that anticipatory bail petition of co-accused Karan Singh has already been dismissed by this

Court vide order dated 31.05.2023. He has submitted that in these circumstances, the petitioner does not deserve the grant of anticipatory bail.

Learned counsel for the complainant has also opposed the submissions made by counsel for petitioner. He submits that all the accused in connivance with each other have cheated the complainant. He further submits that granting bail to the petitioner at this stage would hamper the course of a free and fair investigation.

I have heard learned counsel for the parties at length and have gone through the record of the case carefully.

From perusal of the record it is apparent that the investigation in this case is under progress. Recovery of duped amount of Rs.31,00,000/- which is allegedly credited in the bank accounts of the petitioner, is to be recovered from him. During investigation it has also been found that petitioner and Rohtash in collusion with the co-accused Netarpal, Thakar Singh and Harpal have defrauded complainants of Rs.03,43,12,187/- by making false and fabricated agreements to sell in their favour. Needless to say that custodial interrogation of the petitioner is required for proper and effective investigation. The investigation in this case is at threshold. Anticipatory bail petition of co-accused, namely, Karan Singh has already been dismissed by this Court vide order dated 31.05.2023.

Hon'ble the Supreme Court in **State represented by CBI Vs. Anil Sharma**, (1997) 7 SCC 187 has held as under:-

“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 ensconded with a favorable order under [Section 438](#) if the code. In a case like this effective interrogation of suspected person is of tremendous

advantage in disintering 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 insulted 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 disintering offences would not conduct themselves as offenders.”

The Hon’ble Apex Court in plethora of judicial precedents including **Gurbaksh Singh Sibbia Vs. State of Punjab**, AIR 1980 SC 1632, has held as under:-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or

rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

In the above said case, the Hon'ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual.

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances.

Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in his favour.

Resultantly, the petition being devoid of any merit is hereby dismissed.

30.10.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE
: Yes/No
: Yes/No