IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

207

CRM-M-56243-2022 (O&M)
Date of decision: 12.04.2023

DANISH FIROZ PATHAN AND ANOTHER

....Petitioners

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Gojan, Advocate for the petitioners

Mr. Tanuj Sharma, AAG Haryana

Mr. Kushagra Beniwal, Advocate for respondent No.2.

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AMAN CHAUDHARY. J.

1. Present petition has been filed under Section 438 of the Code of Criminal Procedure (for short 'CrPC') for grant of anticipatory bail to the petitioners in case FIR No.395 dated 27.08.2022, registered under Sections 406, 420, 506 of the Indian Penal Code, 1860 registered at Police Station Sector 17, HUDA Jagadhri, District Yamunanagar.

2. Briefly put, the facts are that petitioners, represented that there is a bulk production of onion in Nasik and offered to the complainant to enter into a partnership with him proclaiming to be wholesale dealers and also export the same and assured him of huge profit and thus allured him to invest money in onion 56. The accused-petitioners showed the godown for storage of onion and that they have settled the rent for the same @ Rs. 60,000/- per annum and booked six godowns on 30.05.2021, for which he on their asking transferred Rs.50,000/-

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through google pay and handed over Rs.20,000/- in cash to petitioner No.1. Thereafter, Rs.10 lacs were transferred by the wife of the complainant through RTGS to the account of the accused-petitioners. Thereafter, on the asking of the petitioners that they were to purchase the crops from the farmers, the complainant transferred Rs.10 lacs through RTGS on 08.06.2021, Rs.10 lacs on 15.06.2021, Rs.10 lacs on 16.06.2021, Rs.15 lacs on 17.06.2021 and Rs.9,30,000/- on 18.06.2021, thus, in all Rs.65 lacs were paid to the petitioners. However, despite demand of record and account by the complainant from the petitioners, no satisfactory response was received. Later on through RTI, the complainant came to know that the petitioners have no connection with sale and purchase of onion, nor any purchase of onion was done. Still the accused kept sending false messages and fake photographs of vegetables and fruits.Finally, on the continued insistence of the complainant, the petitioners informed that the onion that were purchased in the name of the complainant perished due to rain. Thus all facts having been found to be false, the FIR was got registered.

3. Learned counsel contends that it is a case of civil nature, however, given criminal colour. The investment was made by the complainant with the petitioners regarding purchase and storage of onions to earn profit. The petitioner had received an amount of Rs.65 lacs from the complainant for the purchase of onions out of which, bills for an amount of Rs. 57 lacs have been placed on record Annexure P-7, issued by Kedarnath Punamchand Kalantri, the authorised dealers for sale and purchase of onion. Over and above the aforesaid amount, petitioner spent about Rs.2 lacs for the storage and labour as well. The onions had perished due to rain. Documentary proofs regarding the transaction which are in their

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possession, will be handed over to the investigating agency, in case they are permitted to join the investigation and the same can be verified.

4. Learned State counsel has filed status report by way of an affidavit of Rajat Gulia, HPS, Deputy Superintendent of Police, Radaur (Yamuna Nagar) and submits that the bills as submitted by the petitioners during the time when they joined investigation in terms of the order passed by this Court vide order dated 08.02.2023 have been found fictitious. To recover the huge amount that the complainant was induced to pay the petitioners and find out the *modus operandi* of the alleged crime, the custodial interrogation of the petitioner is required. There is every possibility that the petitioners can influence the witnesses and tamper with the record. Thus, he prays for the dismissal of the present petition.

5. Heard.

6. It would be apposite to make a reference to the relevant paras of the Status report, which read thus:

> "That Kedar Nath Poonam Chand Kalantari s/o Poonam Chand Kalantari joined in the investigation. The said person stated that he is running a firm in the name of Kedar Nath Poonam Chand Kalantari and doing the business of sale and purchase of onion. He had issued the bills in the name of Ayan Traders. Danish Pathan is owner of Ayan Trader. The date, amount and weight mentioned in the said bills is correct. In the month of December 2022, Danish Pathan came to him and told him to mention the name of his firm as Pathan Exports in place of Ayan Traders, because his name is Danish Pathan and also put the name of Sumer Singh in bracket in these bills. The said witness also stated that on saying of Danish Pathan he also deposited TDS in the name of firm Ayanan Traders for 2020-21 and then deposited TDS in the name of Pathan Exports. In TDS form only 'Pathan Exports' is written however, in bills Pathan Exports Stock Sumer Singh got written through computer.
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> That it is also worth submitting here that respondent no. 2 made the payment of Rs.65 lacs to Pathan Exports through

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> Haryana Agro Forests CompanyThe petitioner has not given any bill in the name of Haryana Agro Forests Company or in the name of complainant.
> That in view of submissions made above, after verification, it has been found that the aforesaid bills have been found fictitious, as Kedar Nath Poonam Chand Kalantari stated that the petitioner had earlier got issued the bills in the name of his firm 'Ayan Trades' however, later he said him to change the name of his firm in bills as 'Pathan Exports' in place of 'Ayan Traders' and also told him to mention the name as ‘Pathan Exports Stock Sumer Singh’.”

7. It would be worthwhile to refer to the judgment of Hon'ble The Supreme Court in **Jai Prakash Singh vs. State of Bihar**, (2012) 4 SCC 379, wherein while relying on the judgments in the cases of **D.K Ganesh Babu vs. P.T Manokaran**, (2007) 4 SCC 434, **State of Maharashtra vs. Mohd. Sajid Husain Mohd. S. Husain**, (2008) 1 SCC 213, and **Union of India vs. Padam Narain Aggarwal**, (2008) 13 SCC 305, held thus:

> “6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record.
> 7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:
>
> > “438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:-
> > (i) The nature and gravity of the accusation;
> > (ii) The antecedents of the applicant including the fact as to whether he 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; and
> > (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so

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arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail."

8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation.

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13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

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22. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required."

8. The manner in which the crime is committed, gravity of the offence, impact on public confidence in the justice delivery system, etc. are the factors relevant to be considered at the time of grant of anticipatory bail.

9. In the present case, grave and serious allegations of cheating from the inception, inducing the complainant to pay huge amount of Rs. 65 Lacs to the accused-petitioners and another co-accused and misappropriating the same have been levelled against them. The petitioners were even granted an opportunity by this Court to join the investigation by way of interim order dated 08.02.2023, when they made a specific statement that documentary proof regarding the

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transaction will be produced before the investigating agency, which can be verified. The said documents submitted by the petitioners, being the bills were found to be fictitious by the Investigating Officer on having conducted an inquiry. The investigation is stated to be in progress and custodial interrogation of the petitioners has been sought to find out their *modus operandi,* a huge amount has to be recovered and there being apprehension of them influencing the witnesses and tampering with the records, this Court is of the view that they do not deserve the concession of anticipatory bail.

10. In **P. Chidambaram vs. Directorate of Enforcement,** (2020) 13 SCC 791, Hon'ble The Supreme Court 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 Cr.P.C 1973 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."

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11. On the aforesaid anvil of facts and circumstances of the case and the judgments referred to hereinabove, the present petition is liable to be dismissed.

12. Resultantly, the present petition is dismissed.

13. Needless to say that observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

April 12, 2023
S.Sharma(syr)

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

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