

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

103

CRM-M-59961-2022 (O&M)
Date of decision : 06.01.2023

Shamsher Singh @ Shera

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Ankit Joshi, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, Senior D.A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.207 dated 15.11.2022 registered under Sections 420 and 120-B of the Indian Penal Code, 1860 and Section 25 and 27 of the Arms Act, 1959 at Police Station Majitha, District Amritsar.

The above-said FIR was registered on the complaint made by complainant-Rajinder Singh, Manager of Cosmo Vehicle Private Ltd. alleging that the petitioner has purchased vehicle Tata Harrier valuing about Rs.24,00,000/- from his agency by paying some amount and thereafter illegally retained the vehicle without making full payment. When the agency demanded the remaining amount from him he refused to give the money. That during the proceedings, the petitioner along with his accomplices, who were armed with weapon, had forcibly taken away the said vehicle.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case by the complainant only to extract money from the petitioner and his family. No documentary evidence has been produced by the complainant with regard to the alleged inducement by the petitioner. Even the complainant is not aware with the name of the petitioner and wrongly mentioned his name as Gursher Singh in the FIR. The complainant along with recovery agent had snatched the car and police did not register the FIR against them. Nothing has to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is also ready and willing to join investigation. Therefore, the petitioner may be granted anticipatory bail.

Notice of motion.

On the asking of the Court, Mr. Joginder Pal Ratra, Senior D.A.G., Punjab, who is present in the Court, accepts notice on behalf of the respondent-State and opposed the present petition on the ground that the petitioner has cheated the complainant and his custodial interrogation is required for recovery of weapon used in the occurrence. The petitioner is a habitual offender and also involved in 07 more cases. Therefore, the petitioner does not deserve the concession of anticipatory bail.

Having heard learned counsel for the parties, I am of the view that the allegation against the petitioner is serious in nature. The petitioner purchased car valuing about Rs.24,00,000/- from the complainant's agency by paying Rs.2,00,000/- and thereafter, illegally retained the car without paying the remaining amount and when the

complainant came to the petitioner to take back the car, the petitioner along with his accomplices, who were armed with weapon, had forcibly taken away the car from the complainant.

Moreover, The antecedents of the petitioner are also not good as he is already involved in 07 other cases. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Furthermore, investigation is still going on in the present case and custodial interrogation of the petitioner is required for thorough investigation. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in ***State Vs. Anil Sharma : (1997) 7 SCC 187*** 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 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is 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 a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

06.01.2023

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No