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

CRM-M-60309-2022

Date of Decision: 20.04.2023

Nidhi Agarwal

... Petitioner

Vs.

State of Haryana and Another

... Respondents

CORAM: HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Jayant Bhatt, Advocate with
Ms. Deepali Suri, Advocate and
Mr. Satyam Tandon, Advocate
for the petitioner.

Ms. Ambika Sood, Additional A.G. Haryana.

Mr. Prateek Jain, Advocate
for the respondent No. 2.

AMARJOT BHATTI, J. (ORAL)

1. Nidhi Agarwal has filed petition under Section 439(2) Cr.P.C. read with Section 482 Cr.P.C. seeking setting aside the impugned order dated 01.10.2022 (Annexure P-2) and cancellation of anticipatory bail granted in favour of accused i.e. respondent No. 2 in FIR No. 0348 dated 09.09.2022 under Sections 354, 406, 452, 506, 509 of IPC, registered at Police Station Badshahpur, Gurugram with a prayer to expunge remarks made by learned Additional Sessions Judge in paras No. 2, 3 and 6 of the impugned order dated 01.10.2022 against the petitioner.

2. It is submitted that Amit Adhana - respondent No. 2/accused had filed anticipatory bail which was granted in his favour vide impugned order dated 01.10.2022 (Annexure P-2). The complainant and accused had come in contact in April, 2017 at Gurgaon Polo and Equestrian Club where

the accused was a horse riding instructor. They developed friendly relationship and started living together from July, 2018 till August, 2021. The accused resigned from his job in January, 2019 and bought three acres of land in village Sakatpur, Sector-79, Gurugram. The accused took financial help from the complainant and she had given Rs. 47,83,741/- over the period of two years. The details of loan amount along with bank statement are Annexures P-3 and P-4. By the end of 2020, she requested the accused to repay the loan amount but he was making excuses and false promises. On 26.07.2021, a mutual settlement agreement was effected between complainant and accused and notarized the said settlement agreement on 04.08.2021, which is Annexure P-5. On 24.09.2021, the complainant took over the possession of assets and farm and requested the accused to transfer the ownership of horses in the name of complainant but he failed. On 04.10.2021, the accused along with his associates entered the farm by jumping the wall forcibly. She was beaten up and inappropriately touched and he also took away the horses and the assets of the farm. In October, 2021 the accused started a new horse riding club in the name of Harmony Equestrian Club by using the said 10 stolen horses. When all efforts failed, she filed a complaint in Police Station Badshahpur, Gurugram and subsequently, the present FIR was registered.

The petitioner has sought cancellation of anticipatory bail on the ground that the material available on the record was ignored. The investigation was still going on. The learned Additional Sessions Judge, Gurugram did not consider that there was chance of tampering of the evidence. The facts of the case and the gravity of offence was not considered. The accused had cheated her numerous times and threatened

her. It is wrongly observed in the impugned bail order that this FIR is a counter blast to the civil suit. The complaint was lodged with the police on 06.03.2022 and the FIR was registered on 09.09.2022. Copy of complaint is Annexure P-6. The suit for recovery was filed by the complainant in May, 2022, almost after two months from the filing of complaint to SHO Badshahpur. It is argued that the anticipatory bail application was wrongly allowed by learned Additional Sessions Judge, Gurugram, without proper appreciation of the facts of the case and the remarks given by learned Additional Sessions Judge in paras No. 2, 3 and 6 of the impugned order are liable to be set aside.

3. On the other hand, learned counsel representing the State has filed detailed status report regarding the facts of the case and the investigation carried out by the police. On merits, learned counsel representing the State supported the version of petitioner that it was wrongly observed by learned Additional Sessions Judge that the FIR is a counter blast to the civil suit. It is further pointed out that the civil suit is pertaining to the recovery of amount which is still pending. The investigation of the case is going on. The allegations are serious in nature. The learned state counsel supporting the version of petitioner prayed that the anticipatory bail granted in favour of respondent No. 2/accused may be cancelled, in the interest of justice.

4. Notice of petition was given to the respondent No. 2 who also filed his reply to the petition taking the stand that in fact, the petitioner is seeking the relief of setting aside the impugned order dated 01.10.2022 granting bail in his favour and she is not seeking cancellation of bail. The order passed by learned Additional Sessions Judge granting anticipatory

bail is fully justified. The facts of the case and the documents were rightly considered and appreciated in the bail order. The remarks/observations of the learned Additional Sessions Judge are based on the documents and there is no reason to expunge the same. The civil suit filed by the petitioner seeking recovery of amount of Rs. 57 lacs from the respondent No. 2 is a frivolous suit and the same is pending before Civil Judge (Jr. Division), Gurugram. The petitioner in that case has filed two applications, one under Order XXXIX Rule 1 & 2 of C.P.C. seeking stay on sale of the horses of the respondent No. 2 and the other under Order XXXVIII Rule 5 of C.P.C. seeking attachment of the said horses. After hearing arguments in the said civil suit, both the applications are dismissed vide orders dated 16.08.2022 and the interim stay granted vide order dated 26.05.2022 was automatically vacated. The respondent No. 2 was granted anticipatory bail with the direction to join the investigation. He immediately complied with the said directions of the Court and informed the Investigating Officer that he would join the investigation on 06.10.2022. He answered all the queries put by the Investigating Officer. The Investigating Officer wanted him to produce certified copy of the bail order. He requested time as he was to request his lawyer to obtain certified copy. He has mentioned about the dates when he was called by the Investigating Officer for joining the investigation. In pursuance of the bail order, he was formally arrested and released on bail. He has also filed one petition bearing Criminal Misc. M No. 55140 of 2022 for quashing of FIR. The respondent No. 2 denied the execution of mutual agreement dated 26.07.2021. The said civil suit has been filed on the basis of forged and fabricated document. It is denied that petitioner is the owner of the horses or had requested for transfer of

ownership of horses. He further denied that he has started Harmony Equestrian Club with 10 stolen horses. The learned counsel for respondent No. 2 argued that he is always ready to cooperate with the investigating agency. The anticipatory bail granted in his favour cannot be cancelled in a routine manner. He has relied upon the authority cited in *Criminal Appeal No.872-873 of 2020 Arising out of SLP (Crl.) Nos. 4935-4936 of 2020, titled Dr. Naresh Kumar Mangla Versus Anita Agarwal and Others, decided on 17.12.2020*, where the various factors are discussed which are to be borne in mind while considering the application for grant of anticipatory bail, as explained in the case titled as *Siddharam Satlingappa Mehtre v. State of Maharashtra*, which runs as under: -

“17.... The factors to be considered include:

“112. [...]

- (i) the nature and gravity of the accusation and the exact role of the accused;*
- (ii) the antecedents of the applicant including whether the accused has previously undergone imprisonment on a conviction by a court in respect of a cognizable offence;*
- (iii) the possibility of the applicant fleeing from justice;*
- (iv) the likelihood of the accused repeating similar or other offences;*
- (v) whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting them;*
- (vi) the impact of the grant of anticipatory bail particularly in cases of magnitude affecting a large number of people;*
- (vii) the court must carefully evaluate the entire material against the accused. The court must also clearly comprehend the exact role of the accused in the case. Cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should be considered with even greater care and caution because overimplication in such cases is a matter of common knowledge and concern;*
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- (ix) the reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;*
- (x) frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of*

there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record...”

It is argued that the present petition has been filed by the petitioner only to harass the respondent No. 2. He has fully cooperated with the investigating agency and there is no valid reason for the cancellation of bail granted in his favour.

5. I have considered the arguments and have gone through the record. Nidhi Agarwal has filed petition under Section 439(2) read with Section 482 Cr.P.C. for setting aside the order dated 01.10.2022 (Annexure P-2) vide which the respondent No. 2 was granted anticipatory bail in FIR No. 0348 dated 09.09.2022 under Sections 354, 406, 452, 506, 509 of IPC, registered at Police Station Badshahpur, Gurugram. The copy of FIR is Annexure P-1 and the copy of impugned order dated 01.10.2022 is Annexure P-2. After the grant of anticipatory bail in favour of Amit Adhana – respondent No. 2/accused, he has joined the investigation and released on bail in compliance to the aforesaid order. The aforesaid FIR has been registered under Sections 354, 406, 452, 506, 509 of the IPC on the statement of Nidhi Agarwal, recorded on 09.09.2022. It is further an admitted fact that petitioner has also filed suit for recovery which is pending in the Court of Civil Judge (Jr. Division) Gurugram. In that civil suit, the petitioner has sought recovery of amount along with the relief of permanent injunction. The reply submitted by the respondent No. 2 indicates that in the said civil suit, petitioner had filed one application

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under Order XXXIX Rule 1 & 2 of C.P.C. and another application under Order XXXVIII Rule 5 of C.P.C. which have been declined vide orders dated 16.08.2022. The respondent No.2 has denied the execution of agreement dated 26.07.2021 as well as the liability as detailed in the civil suit. Therefore, the investigation of aforesaid FIR is going on separately, whereas, the civil litigation regarding recovery of amount is also going on separately before the Civil Court. In the criminal case, the criminal liability is to be determined, whereas, in the civil suit, the civil rights of the parties are to be decided after recording of evidence of both the parties. The merits of the case cannot be discussed while dealing with the bail application. The respondent No. 2 has already joined the investigation. There is nothing on record to show that he is avoiding the process of law or any likelihood of his fleeing to another country. There is no such allegation that he has tampered with the prosecution evidence. In fact, the investigation of the case in the aforesaid FIR is still going on and the challan is yet to be presented. He has not interfered with the course of investigation. Under these circumstances, I do not find any valid reason to cancel the anticipatory bail already granted in favour of respondent No. 2 vide order dated 01.10.2022 and the relief claimed by the petitioner regarding cancellation of anticipatory bail is accordingly, declined.

6. The petitioner has also sought the relief to expunge the remarks in paras No. 2, 3 and 6 of impugned order dated 01.10.2022 where it is alleged that the FIR is counter blast to the civil suit. I have considered this aspect of the present case. The petitioner has placed on record one complaint filed before SHO, Police Station Badhshahpur, Gurugram dated 19.03.2022 (Annexure P-6). I have also perused the FIR registered on the

a written complaint dated 09.09.2022. In this FIR, there is no reference of the previous complaint filed by the petitioner dated 19.03.2022. Even otherwise, both the FIR as well as civil suit are initiated by the present petitioner. The learned Additional Sessions Judge, Gurugram has given observation regarding the pendency of civil suit as well as the FIR, which has been registered on 09.09.2022. Therefore, I do not find any objectionable remarks in the impugned bail order which will adversely affect the stand taken by the present petitioner.

In view of my above discussion, I do not find merits in the petition filed by the petitioner – Nidhi Agarwal and the same is accordingly, declined.

Pending application, if any, also stands disposed of.

20.04.2023
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(AMARJOT BHATTI)
JUDGE

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