

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(102)

CRM-M-60564-2022

Date of Decision: 10.01.2023

Sanjay Kumar

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Rajesh Duhan, Advocate for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

Mr. Yashveer Kharb, 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.473 dated 28.11.2022 under sections 406, 420 I.P.C, registered at Police Station, Madlauda (Matlauda), District Panipat.

As per factual matrix, the FIR in question was registered on the application of one Azad Singh, wherein allegations were made against Jai Bhajan son of Ranjit Saini and Sanjay Kumar son of Bal Krishan Saini. The complainant alleged regarding embezzlement of Rs.15 lakh from him on the pretext of providing job to his son in the Civil Secretariat, Chandigarh. On the demand of the money Sanjay Kumar i.e. the petitioner started threatening him. It was alleged that about 3 years ago the complainant had discussed with accused Jai Bhajan to provide job to his son Sumit. He promised him that Sanjay Kumar is his close relative and is posted on a higher post in Civil Secretariat, Chandigarh. He demanded Rs.10 lakh from him which were given by the complainant. Rs.10 lakh was given in cash to

Jai Bhajan and Sanjay Kumar on 16.6.2019. As a guarantee to the money, accused Sanjay Kumar issued a cheque bearing no.798391 dated 20.9.2020 amounting to Rs.10 lakh of his saving account in United Bank of India, Gokul Market, Karnal. It was assured that if he fails to provide job to his son Sumit, then, he (the complainant) can encash the cheque. After having received the money accused kept on avoiding the complainant on one pretext or the other. Neither the money was returned nor his son was provided any job. He demanded Rs.5 lakh more from the complainant to accomplish the promise made of providing job to his son and the complainant gave the same to accused in November, 2020. When the complainant suspected the accused he presented the cheque given to him but the same was returned on the ground that the account of which the cheque was issued had already been closed. A request was made to take legal action against the culprits.

Apprehending the arrest, petitioner approached the court of learned Addl. Sessions Judge, Panipat for grant of bail, however, after hearing the parties, the same was declined vide order dated 7.12.2022. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner is a rustic villager and has been falsely implicated in this case. It is submitted that the allegations made are false and frivolous as petitioner has no criminal antecedents. It is further submitted that there is no documentary proof regarding the source from which the complainant had arranged such a heavy amount of Rs.15 lakh, as alleged. Counsel submits that no case for custodial interrogation of the petitioner is made out and he is ready to join investigation.

On the other hand, learned State counsel and counsel for the complainant have opposed the submissions made by counsel for the petitioner. They submit that there are specific allegations against the petitioner and if he is granted bail at this stage, the same may scuttle the ongoing investigation.

I have heard learned counsel for the parties at length and have gone through the records carefully.

From the allegations made in the FIR, it is apparent that there are specific allegations of having embezzled an amount of Rs.15 lakh from the complainant on the pretext of providing job to his son. The petitioner issued a cheque to the complainant as security for the money received by him. After taking the money he kept on dilly dallying, which compelled the complainant to present the cheque given by the petitioner, however, it was found that the cheque was issued by the petitioner in a clandestine manner from an account which has already been closed.

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 ensconced with a favorable order under Section 438 of 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 insulated 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 disinterring offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in **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.

(RAJESH BHARDWAJ)
JUDGE

10.01.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No