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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-60664-2022
Date of decision : 23.01.2023

Najiya Kousar .....Petitioner

versus

State of Haryana ..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ
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Present :- Mr. Manoj Tanwar, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana assisted by
SI Rattan Singh, P.S. City Sonipat.

Mr. Mandeep Singh Kundu, Advocate
for the complainant.

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RAJESH BHARDWAJ, J.

Petitioner has approached this Court praying for grant of anticipatory bail to the petitioner in case FIR No.669 dated 18.11.2019, under Sections 406, 420, 506 of IPC and Section 3, 4, 5 and 7 of Prize Chits and Money Circulation Scheme Act, 1978, registered at Police Station City, Sonipat, Haryana.

Succinctly, the facts of the case are that the FIR was lodged by the complainant namely, Bhoop Singh wherein, he alleged that he came in contact with one Naveen Kumar Meena, a teacher employed in Rajasthan School and became friendly through one Pardeep Kumar Dahiya. Naveen Kumar Meena had told complainant that he is an agent/Director of the Director Evergreen Future Investment Company having its office in Goa State. He induced the complainant to invest in the above-mentioned company with the assurance that in six months they would make the invested amount double. It was assured that their company makes payment of its investors since July, 2018. The complainant was enticed by giving such lucrative offer which he could not refrain on that stage. Falling in the trap, the complainant started investing in the above-mentioned company. In the initial stage, some amount was also returned, however, the complainant invested an amount of Rs.6,13,000/- on 05.11.2018 then Rs.3,00,000/- on 26.11.2018 from the account of his father Sehdev Singh Malik and he made further investment of Rs.6,15,000/- in this company. Thereafter, time and again, he tried to contact the accused but of no avail. He was advised to visit the office of his company in Goa and he visited the same but found the office locked and none of the accused/Directors could be traced. On verification from different sources, he found himself and his family to have been cheated by the accused and thus, he lodged the FIR to take legal action against the accused. On registration of the FIR, investigation commenced and the petitioner approached the Court of learned Additional Sessions Judge, Sonipat praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge declined the same vide his order dated 16.12.2022. Aggrieved by the same, petitioner is before this Court praying for grant of bail.

It has been vehemently contended by counsel for the petitioner that the petitioner has been falsely and frivolously implicated in this case. He submits that the petitioner is neither named in the FIR nor there is any allegation levelled against her. He has submitted that the allegations are against co-accused who induced the complainant to invest money in the company. He has submitted that the husband of the petitioner is also falsely named in the FIR and the petitioner is wife of co-accused R.M. Chamam having two small children. He submits that the petitioner has been named in the FIR only being the wife of Rizwan Mohd. Chaman who has been named in the FIR. He submits that the petitioner being innocent deserves to be granted anticipatory bail.

Learned State counsel has placed on record the status report by way of affidavit of Mr. Virender Singh, HPS, Assistant Commissioner of Police, City, Sonipat. He has vehemently opposed the submissions made by counsel for the petitioner. He, on instructions from SI Rattan Singh, P.S. City Sonipat, has submitted that soonafter the registration of the FIR, investigation commenced and the investigating agencies started collecting the records of the company as alleged in the FIR. He submits that during investigation *prima facie* the complicity of the petitioner is strongly proved and it was found during investigation that the bank accounts in which the complainant, his wife and parents had transferred the money were found to be of the account holder namely, Najiya Kousar (petitioner) wife of R.M. Chaman with Axis Bank, Chitradurga, Karnataka which were got opened in the name of Evergreen Business Solutions Private Limited. It is further contended that the bank account statement was also obtained on 26.01.2022. The house of Najiya Kousar and her husband R.M. Chaman were raided on 26.01.2022 but they could not be traced. The investigating agencies further found that one FIR No.434/2019, under Sections 406, 420, 120-B IPC and Sections 3/4

MPIT Act, Police Station Jeenshi, District Aurangabad, Maharashtra was pending against accused Najiya Kousar and her husband R.M. Chaman in the Court of learned Additional Sessions Judge, Aurangabad. He further submits that on the date fixed before the learned trial Court on 01.10.2022, they went to the Court but both the accused did not appear but moved an application for grant of exemption. Again on the adjourned date i.e. 11.01.2022, they filed application for exemption and again did not appear to avoid arrest. He further submits that the address given by Najiya Kousar and her husband R.M. Chaman in the Court at Aurangabad was verified but again they were not found as it was found to be a rented accommodation which they had already left. From the verification of the statement of the account in the name of Evergreen Business Solutions Pvt. Ltd with Axis Bank, Chitardurg, transaction of approximately Rs.36.00 lakh was found from the account of the complainant in the account of the company. Further, from the bank account of Evergreen Business Solutions Pvt. Ltd., a transaction of Rs.2.00 lakh on 14.11.2018, Rs.2.00 lakh on 30.11.2018 and Rs.10.00 lakh on 30.12.2018 were found to be transferred in the bank account of petitioner-Najiya Kousar. Similar transactions were also found to have been made from this account in the account of her husband co-accused R.M. Chaman. He further submits that from the account statement of this company, total transaction of approximately Rs.90.00 crores has been found from 23.08.2018 to 15.01.2019. The addresses provided by the accused-petitioner while opening the accounts were found to be vague. It is submitted that the case is under investigation and all the accused are at large. It is further submitted that evidently the petitioner is also involved in another case of similar nature and thus, granting anticipatory bail to the petitioner at this stage would seriously hamper the ongoing investigation. It is argued that the petitioner has no case for grant of anticipatory bail.

Learned counsel for the complainant has also strongly opposed the prayer made by learned counsel for the petitioner and has stated that the petitioner has cheated the complainant and his parents & as such she is not entitled for any relief of grant of pre-arrest bail.

I have heard counsel for the parties and perused the record.

Evidently, the complainant as alleged was trapped by the co-accused to invest in the company launched by the accused. The complainant along with his family members invested a heavy amount and thereafter found himself cheated. Neither accused could be traced nor the address of the company has been found as on date. The investigation conducted so far reveals the complicity of the petitioner. The bank record obtained has shown the transactions in the account of the petitioner from the account of the complainant. The petitioner and her husband had opened Bank Account by giving their fake addresses and their intention from the very beginning appears to be dishonest.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

> *"Direction for grant of bail to person apprehending arrest:-*
> *(1) Where any person has reason to believe that he may be arrested on 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 arrested,

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

As per the law settled by the Hon'ble Supreme Court, in <u>Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632</u>, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

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.*

The Hon'ble Supreme Court *in State Vs. Anil Sharma, (1997) 7SCC 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 ensconced 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.*

Weighing the facts and circumstances of the present case on the anvil of the law settled, it is apparent that granting anticipatory bail to the petitioner at this stage would seriously hamper the ongoing investigation and thus, this Court finds no merits in the petition and hence, the same is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

23.01.2023
m. sharma

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