

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-60455-2022
Date of decision : 30.01.2023

BIJENDER

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Lalit Kumar Yadav, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.216 dated 17.11.2022 registered under Sections 406 and 420 of IPC, 1860 at Police Station Jui Kalan, District Bhiwani.

2. The brief facts of the case are that on 17.11.2022 a registered letter was received from the complainant-Nafe Singh. This was a combined application of five persons namely, Nafe Singh, Ram Kishan, Satya Narain, Ramphal and Rajpal Singh. The common allegations were to the effect that Bijender (petitioner) in the guise of promising employment to these complainants took large amounts of money from them separately and was not returning the same. It was contended that the Panchayats had taken place 3-4 times but this money which had been taken on false promises had not been returned.

Based on the application, the present FIR came to be registered

During the course of investigation, it transpired that the petitioner masqueraded as an Inspector Income Tax and promised employment to the complainants. They were sent appointment letters on their WhatsApp messaging application which appeared to be forged.

3. The learned counsel for the petitioner contends that the petitioner is innocent and a false story has been concocted against him. In fact, the complainant had borrowed a sum of Rs.5,00,000/- from the petitioner in the month of October, 2021 and when the petitioner demanded back the amount from Nafe Singh, he (complainant) refused to return the said amount. The petitioner was thereafter compelled to move an application to the C.M. Window on 21.09.2022 (Annexure P-2) which was pending inquiry. He contends that no case for custodial interrogation of the petitioner was made out and therefore, the petitioner be granted the concession of anticipatory bail, moreso, when he is suffering from a serious ailment as was borne out from the treatment record (Annexure P-3).

4. A status report dated 20.01.2023 by way of an affidavit of Jagat Singh, HPS, Deputy Superintendent of Police, Loharu, District Bhiwani, Haryana has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that the complainants have been cheated by the petitioner who masqueraded as an Inspector of the Income Tax Department. The complainant party were given appointment letters which appeared to be fraudulently prepared.

An investigation in that regard was going on. The nature of the allegations levelled against the petitioner did not entitle him to the grant of anticipatory bail.

5. I have heard the learned counsel for the parties.

6. In the present case, specific allegations have been levelled against the petitioner by the complainant and his family members. The petitioner was masquerading as a senior official of the Income Tax Department and promised employment to the complainant party. Forged appointment letters were provided to the complainant side. In view of the nature of allegations, the custodial interrogation of the petitioner is certainly required to take the investigation to the logical conclusion, moreso, when a *prima facie* case is made out against the petitioner.

7. The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** 2022 Live Law (SC) 870 held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation,

we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

8. In view of the aforementioned discussion, I find no merit in the present petition and the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

30.01.2023
JITESH