

CRM-M-58218-2023 (O & M)
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-58218-2023 (O & M)
Date of decision:20.12.2023

Hari Kishan

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Narinder Kumar Beniwal, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

Mr. Ashish Kumar Gupta, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.151 dated 26.10.2023 under Sections 406, 420 IPC registered at Police Station Lalru, District SAS Nagar.

2. The present FIR came to be registered on the statement of Ajaib Singh and Karam Singh who stated that one Hari Krishan @ Hari Kishan was the owner of a piece of land which he agreed to sell to them (complainant party) for a sum of Rs.12,00,000/- vide agreement to sell dated 25.02.2022. A sum of Rs.5,00,000/- was paid in the presence of Vikram Singh and Kulwinder Singh and a sale deed was to be executed by 05.09.2022. However, on the pretext of illness, the accused sought an

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With mutual consent, the date was extended to 10.01.2023. Meanwhile, a further amount of Rs.2,00,000/- was paid through RTGS to Hari Kishan (petitioner). However, on 10.01.2023, when they (complainant party) went to the Tehsil with the balance amount to get the sale deed executed, Hari Kishan did not come there. It transpired that he (petitioner) had sold the same land to one Asha Rani on 22.12.2022. It was apparent that the accused-petitioner had the intention to cheat them (complainant party) from the very outset.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. Taking the allegations to be correct, the case was one of a civil nature at best for which the complainant had already approached the Civil Courts by way of filing a civil suit for specific performance. Only an amount of Rs.2,00,000/- had been paid and the allegations of Rs.5,00,000/- having been received by the petitioner were incorrect. As the case was based on documentary evidence and the civil suit was pending, no case for custodial interrogation was made out and the petitioner was entitled to the concession of anticipatory bail.

4. The learned counsel for the State has filed a reply dated 18.12.2023 in the Court today, which is taken on record. He alongwith the learned counsel for the complainant while referring to the said reply, submit that the offence was established beyond doubt. The agreement to sell had been entered into on 25.02.2022 and the sale deed was to be executed by 05.09.2022. However, at the instance of the petitioner, the date was extended firstly to 07.11.2022 and thereafter, to 10.01.2023. In the interim period, the petitioner had received a further amount of Rs.2,00,000/- through

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Bank transactions. Despite having received an additional amount of Rs.2 lacs during the period when the date for execution of the sale deed had been extended, the petitioner had chosen to sell the same land to Asha Rani on 22.12.2022, prior to the targetted date fixed with the complainant party. Therefore, it was apparent that the petitioner had a dishonest intention from the very inception to cheat the complainant party. As the offences were *prima facie* established and the petitioner had chosen not to join investigation pursuant to a notice sent by the investigating agency, no ground for the grant of anticipatory bail was made out and the present petition was liable to be dismissed.

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

6. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***' has 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.

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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.”

7. In the instant case, the facts narrated in the FIR *prima facie*

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a sum of Rs.5,00,000/- at the time when the agreement to sell was entered into with the complainant party but even later when the date for execution of the sale deed had been extended, the petitioner received a further amount of Rs.2,00,000/-. He, however, did not execute the sale deed in favour of the complainant party and sold the land to Asha Rani on 22.12.2022. Therefore, as the case is *prima facie* established and the investigation is to be taken to its logical conclusion, no case for the grant of the anticipatory bail is made out.

8. In view of the above, I find no merit in the present petition and therefore, the same stands dismissed.

9. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

December 20, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No