

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-61120-2022

Date of Decision:-21.02.2023

Baljinder Singh.

.....Petitioner.

Versus

State of Haryana.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Divyadeep Walia, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

Mr. G.S. Sandhu, Advocate for the Complainant.

JASJIT SINGH BEDI, J.

The Prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.316 dated 29.10.2022 under Sections 406, 420 IPC and Section 24 of Immigration Act registered at Police Station Saha, District Ambala.

The brief facts of the case are that one Harnek Singh-complainant stated that he had two sons. The elder one was Karam Singh and younger one Prince. His cousin Baljinder Singh (petitioner) offered to send his son to America and demanded a sum of Rs.30 lacs. On 15.7.2021, he (petitioner) had taken Rs.5 lacs in cash and passport. On 25.7.2021 his (complainant's) son was taken to Dubai and from there to Ethiopia. A sum of Rs.4,95,000/- was deposited in the account of one Manpreet Singh on 20.08.2021. Thereafter his son was sent to Kenya and a sum of Rs.9 lacs was paid for the same. Subsequently, he was sent to Serbia for which a sum of Rs.4,20,000/- was deposited in the account of Harmanjot Singh and Rs.5 lacs was given to the petitioner in cash. When his son reached Spain a

further demand of Rs.15 lacs was made and he (complainant) deposited Rs.10 lacs from the account of his son Karam Singh into the account of the petitioner on 09.06.2022. Thereafter a sum of Rs.4 lacs was taken by the petitioner and his wife. The entire amount had been arranged after selling his land, truck and availing loans. After staying for 02 months in Spain, the petitioner refused to send his son to America and neither did he refund the money. Legal action was sought.

Based on the aforementioned allegations, the present FIR came to be registered.

The counsel for the petitioner contends that the complainant and the petitioner are the first cousins. The petitioner has no connection with the immigration business and only helped the complainant to find a agent to send his son abroad. There was absolutely no evidence that such a huge amount had been paid to the petitioner. A sum of Rs.10 lacs paid to him had been paid by him further to an agent. The photographs (Annexure P-2) of the son of the complainant in Spain would show that he was living a good life. The present FIR was registered to pressurize the petitioner to get the amount recovered from the travel agent Jasdeep. He therefore, prays that the petitioner be granted the concession of anticipatory bail.

The learned Counsel for the State on the other hand while referring to the reply dated 7.1.2023 contends that the investigation has revealed that an amount of Rs.10 lacs had been transferred into the account of the petitioner from the account of the son of the complainant. Certain amounts have also been transferred through an online app. The complainant had also produced documents to show that he had sold his land and availed gold loans which would show that the funds were generated to be paid to the petitioner. The petitioner was also involved in another case bearing FIR No.633 dated 31.08.2022 under Sections 406, 420, 120-B IPC and 24 of Emigration Act registered at PS Sector 32/33, Karnal. Therefore, the criminal antecedents of the petitioner did not entitle him to the grant of bail.

The Counsel for the complainant has vehemently opposed the bail application stating that the petitioner had cheated the complainant for a huge amount of money and had not sent his son to USA as promised. The antecedents of the petitioner would also show that he is in the business of sending persons abroad and, therefore, the stand of the petitioner that he

was merely helping the complainant being his cousin cannot be believed. Since the allegations were serious and the investigation had to be taken to its logical conclusion the petitioner was not entitled to the grant of anticipatory bail.

I have heard learned Counsel for the parties at length.

The allegations against the petitioner are that he received a sum of Rs.42,15,000/- in cash and cheques for sending the son of the complainant abroad. However, the son was only sent to Spain. On being asked for a refund the petitioner and his family refused to return the money and on the contrary threatened the complainant party. The allegations are also substantiated from the documents produced before the investigating agency by the complainant including bank details, affidavit of agreement to sell, *jamabandi* of the land sold, documents of gold loan etc. Therefore, *prima facie* the offence is established. Despite an attempt to effect a settlement, nothing concrete has fructified.

The Hon'ble Supreme Court in the case of “***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (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”.***

In view of the aforementioned discussion, as the offence is prima facie established and the custodial interrogation of the petitioner is certainly required to take the investigation to its logical conclusion, I find no merit in the present petition and the same is hereby dismissed.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail petition and the Trial Court is free to adjudicate upon the matter uninfluenced by any observations herein.

(JASJIT SINGH BEDI)
JUDGE

February 21, 2022
Vinay

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