

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2412-2024
Date of decision :21.03.2024

SAWINDER SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.S. Dhindsa, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

Mr. Viraj Gandhi, Advocate and
Mr. Adarsh Dubey, Advocate
for the complainant.

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.0098 dated 23.12.2023 registered under Sections 406, 420 IPC, 1860 at Police Station Dhakoli, Tehsil Dera Bassi, District SAS Nagar, Mohali.

2. The present FIR came to be registered at the instance of Dr. Gyaneshwari Longjam wife of Mr. B Umakanta Sharma and the same reads as under:-

“To, The Senior Superintendent of Police. District Administrative Complex, Sec-76 SAS Nagar Mohali-160071, Punjab Subject: - To lodge FIR against the past and present directors of Sky infrastructure Pvt Ltd., (Builder) for fraudulently selling the Flat which has already sold to other party. Madam/Sir, I Dr. Gyaneshwari Longjam wife of Mr. B Umakanta

Sharma, resident of 262-K, 6th floor, Spangle Condos, Gazipur, Zirakpur, 160104, Punjab had purchased Flat No 8, 2nd floor, Highway Homes, Old Gazipur Road, Dhakoli from M/s Sky Infrastructure Pvt Ltd, (Builder) through its Director Mr. Shri Sanjeev Kumar Bindal S/o Shri Gayan Chand, R/o. House No. 155, Sector 21, Panchkula. Haryana (DIN: 00592933 Pan: AGRPK8755H, Aadhar 713395330080, Passport Number 0000M1174528) and paid a consideration of Rs. 10,50,000 by cheque and 13,50,000 by cash. Thereafter the builder handed over the possession of the flat on 25th October 2017 and the builder himself incurred all the expenditure to register this said flat in my name in the Sub- Registrar's Office, Zirakpur on 26th October, 2017. Thereafter, I also enrolled myself as member of RWA Society and have been paying maintenance charges regularly (copy enclosed-1). In addition, the electricity connection was also issued in my name by electricity department, Zirakpur (copy enclosed-2). I have paid property tax of my flat (copy enclosed-3). Recently, I also obtained a copy of Fard from the concerned Patwari (Copy enclosed -6). Since October 2017, I have enjoyed occupation of this flat without any intervention. Currently, this Property has been let out by me and I have also been receiving rent for this flat in my bank account since June, 2018. In addition, I have renovated the flat by spending more than 2 lacs. On 26th June, 2021, I found a Demand Notice (copy enclosed-4) from PNB Housing Finance Ltd (PNB) addressed to Rajat Behai and Rajesh Behai being addressed to my Flat No 8, 2nd floor, Highway Homes, Old Gazipur Road, Dhakoli. The Notice did not bear my name, instead it mentioned that so called persons namely Rajat Behai and Rajesh Behai had

taken loan from PNB against hypothecation of my flat. Further, the Notice stated that Rajat Behal and Rajesh Behal have defaulted on this loan and a demand of Rs. 27,63,970.25/- is outstanding against them. On the above submission, I have been frauded by the builder and their Directors (past and present) (copy enclosed-5). I have also filed a complaint online on 20th September, 2021 vide CRN: 1409/2021 In addition, I have also initiated Civil Suit No 549/2021 (dated 27th July 2021) against the Builder, Rajat Behai, Rajesh Behai and PNB. However, in this said civil matter, Builder, Rajat Behai and Rajesh Behai have not filed any reply against the matter in the Hon'ble Court till date except Bank. Therefore, I request your good office to initiate criminal investigation against all the past and present directors of Sky Builders to determine why this said flat has been sold twice by the builder. In addition, Rajat Behai, Rajesh Behai and PNB Housing Finance Limited may be investigated that on what basis the flat has been bought by Rajat Behai and Rajesh Behai from the builder. In regard to bank, on what basis the loan amount has been sanctioned. FIR should be lodge accordingly, to all the past and present directors of the Company (builder) for committing fraud to the innocent buyer (me). Your sincerel SD/-Dr. Mrs. Gyaneshwari Longjam W/o B Umakanta Sharma Spangle Condos Flat No. 262-K, Top Floor, Gazipur Zirakpur. Punjab. Phone Number:-9814106803 (9779333007).”

3. The learned counsel for the petitioner contends that he has been falsely implicated in the present case. No specific role had been attributed to him in the FIR. The petitioner was merely a Supervisor between the years 2013-2018 and during that period, the Directors of the

Company would send their employees to encash the cheques issued by the complainant and others. In this context, some cheques had been handed over to the petitioner to deposit into the accounts of the company. However, the petitioner had never met the complainant. Even otherwise, the entire transaction between the complainant and the company took place in the year 2017 and the petitioner only remained a Director between April 2018 till 2019. The complainant had instituted a civil suit against all the accused persons including Rajat Behal and Rajesh Behal but the petitioner had not been made a party to the said suit. The Investigating Agency had gone to the extent of involving those directors who had left the company in the year 2013. As the petitioner was ready and willing to join investigation, he was entitled to the concession of bail.

4. On the other hand, the learned State counsel submits that the petitioner and his co-accused had cheated the complainant of a huge amount of money in the name of selling a flat to her which had been sold by them to some other persons earlier. The complainant had in fact handed over the money to the petitioner who was initially an employee of the Company and later on assumed the role of a Director which would clearly show the active connivance of the petitioner in the commission of the offence. If the case of the petitioner that he was acting on behalf of the company was taken to be correct, then the cheques ought to have been deposited directly in the account of the Company and would not have been handed over to the petitioner as self-cheques. He, therefore contends that the custodial interrogation of the petitioner was certainly

required to unearth the manner in which the offence was committed by him in connivance with the other officers and Directors of the Company who are absconding.

5. A reply dated 12.03.2024 has been filed on behalf of the complainant by the learned counsel for the complainant. The same is taken on record. While referring to the reply, he contends that it was the petitioner also who had been dealing with the complainant throughout the time he (the complainant) was in the process of buying the flat. The petitioner was earlier employed as a Supervisor and thereafter had been promoted to the post of a Director. The petitioner had categorically admitted that he had received money from the complainant in the capacity of an employee of the accused/company. In fact, the petitioner had withdrawn money on self-cheques that were handed over to him by the complainant as was evident from the bank statement (Annexure R/2-2). Therefore, the petitioner had directly received pecuniary benefit from the complainant who had clearly been cheated as the flat in question had earlier been sold to others who had availed a loan on the same. As the offence was *prima facie* established against the petitioner and his co-accused all of whom were absconding, he was not entitled to the concession of anticipatory bail.

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

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 the instant case, the petitioner was initially a Supervisor and subsequently was promoted as a Director. He has categorically admitted that he had received money from the complainant in the capacity of being an employee. In fact, the petitioner had drawn money on self-cheques that were handed over to him by the complainant as is evident from the bank statement (Annexure R/2-2). If the defence of the petitioner that he had received money only in the capacity of being an employee of the company was taken to be correct, then there was no question of him accepting self-cheques to be used to withdraw cash. He would have simply received cheques in the name of the company which he would have gone on to deposit in the accounts of the company. Therefore, *prima facie*, it cannot be said that the petitioner is not involved in the cheating of the complainant along with the other Directors and officers of the accused company. In fact, the designation of the petitioner as a Supervisor prior to the year 2018 is nothing but a ruse to hoodwink customers including the complainant. It appears that

the petitioner was one of the persons actively involved in the running of the company. His custodial interrogation is certainly required to unearth the entire conspiracy and to obtain information as to the whereabouts of 45the other accused. Therefore, not only is the offence *prima facie* established but the investigation in the present case is to be taken to its logical conclusion because of which the custodial interrogation of the petitioner is certainly necessary.

9. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

10. However, the observations made hereinabove are only for the purposes of deciding this bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

21.03.2024
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No