

CRM-M-2694-2024 (O & M)
(229)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2694-2024 (O & M)
Date of decision:06.02.2024

Ram Kumar Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Mamli, Advocate,
for the petitioner.

Mr. Rajiv Goel, DAG, Haryana.

Mr. Raghav Sharma, 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.437 dated 12.11.2023 under Sections 406, 420 IPC registered at Police Station City Thanesar.

2. The present FIR came to be registered at the instance of Akash son of Mahinder Singh and reads as under:-

“The brief facts of the FIR is that on 28.08.2023, application was received the contents of the application are against Ram Kumar son of Jarnail Singh resident of Village Bodhi Umri, District Kurukshetra M.NO.9811290370. Sir it is requested that I Aakash son of Mahinder Singh resident of Village Khadora, District Sonapat at present resident of Kurukshetra. Sir, my aunty Smt. Lakshmi wife of Bani Sahaye, resident of H.NO.2075, Sector 7, Kurukshetra and the filling station is owned by her and it is in Sector 8 Kurukshetra and I am the caretaker of that filling station. That the above mentioned

CRM-M-2694-2024 (O & M)
(229)

::2::

person is working in a filling station since the year 2018 and in the year 2019 he has been stealing money from our filling station and he has stolen a sum of amount of Rs.20 lacs on which I have come to know recently. On asking he had admitted the fact and he has told that he has deposited total of Rs.15 lacs in account of her wife 558302010007316, The Brach is in Umri and we have recovered a total of Rs.8,85,000/- but the remaining amount he has refused to pay back. He is threatening us you do whatever you want to do. You cannot do anything against me. I have links with many people, if you will do complaint against me in police station then I will get you killed. It will be in your favour that you do not complaint against me. Sir, it is requested that strict action be taken against accused person and a lump sum amount of Rs.11 lacs be recovered from him. Thank You 28.8.2023 Akash son of Mahinder Singh”.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. In fact, the petitioner had given an amount of Rs.3 lacs to the complainant on 07.07.2023 and when he asked for the said amount back, the complainant refused to do so and instead extorted money by way of RTGS from the bank account of the wife of the petitioner on a gun point on 25.08.2023. A complaint in that regard had also been given to the investigating agency. There was absolutely no evidence that the petitioner had transferred any money in the account of his wife. As the recovery had already been effected in the present case and the petitioner was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

4. The learned counsel for the State, on the other hand, has filed a reply dated 31.01.2024 which is taken on record. He alongwith the counsel

for the complainant while referring to the reply contend that during the

CRM-M-2694-2024 (O & M)
(229)

::3::

course of investigation of the present case, the bank statement of the account of the wife of the petitioner was obtained and the record from the Filling Station was also obtained. It was found that a huge amount had been credited in the account of the wife of the petitioner which stands unexplained given the fact that she was unemployed. Certain fake receipts were also recovered during the course of investigation. The petitioner had purchased a property in the name of his wife which he is liable to explain. He had also admitted while talking with one Mohit, Manager of VPS Motor (client of the Filling Station of the complainant) that the offence had been committed by him. The Special Detective Unit, Kurukshetra as well as CIA-1, Kurukshetra had both found that he had committed fraud and had misappropriated the amount of the Filling Station. As the offence was *prima facie* established, the recovery of Rs.11 lacs was to be effected and the investigation was to be taken to its logical conclusion, the petitioner was not entitled to the concession of anticipatory bail.

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(4) RCR (Criminal) 977***', 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

CRM-M-2694-2024 (O & M)
(229)

::4::

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***

CRM-M-2694-2024 (O & M)
(229)

::5::

custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

7. A perusal of the FIR as well as the investigation conducted so far would show that the petitioner being the sole custodian of the Filling Station had siphoned off a huge amount of money into the account of his wife. Receipts of the Petrol/Filling Station have been forged and fabricated. In fact, one receipt issued for an amount of Rs.2500/- pertains to a two-wheeler and it is not possible that fuel amounting to Rs.2500/- could have been filled up in a two-wheeler. Further, the petitioner has also purchased property in the name of his wife who herself has no income of her own. He has also admitted to one Mohit that the offences in question had been committed. Therefore, as the offence stands *prima facie* established and the investigation is to be taken to its logical conclusion, no case for the grant of anticipatory bail is made out.

8. In view of the above, I find no merit in the present petition. 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)

February 06, 2024
sukhpreet

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