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(202)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision :02.02.2024

NITIN YADAV

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

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

Ms. Gursimran Walia, Advocate for
Mr. Baljeet Beniwal, 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.28 dated 20.01.2023 registered under Sections 406, 420, 467, 468, 471 IPC, 1860 at Police Station Baldev Nagar, District Ambala.

2. The present FIR came to be registered at the instance of Bharat son of Amar Pal and the same reads as under:-

“To: S.P. Ambala. Subject: For taking strict legal action against Nitin Yadav son of Shri Mukesh Kumar resident of House No. 55-B, Sector 1, Panchkula Haryana, presently resident of Flat No. 67-C, Skynet Enclave, Zirakpur, Punjab, Mobile No. 82959 23061, 76965 90945. Sir, I Bharat son of Amar Pal am resident of House No. 589, Krishna Colony, Palwal Haryana and I am running a Lab by the name of JSM Examination website service on the main Highway,

Baldev Nagar, Ambala City in the building above the MRF Showroom. I already knew Nitin Yadav son of Shri Mukesh Kumar resident of House No. 55-D, Sector 14, Panchkula Haryana, presently resident of Flat No. 67C, Skynet Enclave, Zirakpur, Punjab, who claimed himself to be a government registry clerk and said that presently he is posted in office the of D.C. Panchkula. I and my partner had filled the forms for recruitment to the post of G Sachiv Haryana and since he was known to us, Nitin Yadav also knew regarding this. Nitin Yadav came to our Lab at Baldev Nagar, Ambala in December, 2020 and on that day Nitin Yadav told us that I am known to a big officer in the HSSC Board and I have every type of arrangement with him. I shall get both of you recruited as Gram Sachiv but for this you shall have to pay me money which I shall give further to the officer of the HSSC Board and after making arrangements I shall get the paper of both of you cleared and get you recruited as Gram Sachiv. He assured regarding this and we had a talk with Nitin Yadav in rupees twenty lakhs each out of which half was to be given in advance and half after getting the job. I and Rahul gave about rupees two lakhs fifty thousand to Nitin Yadav in cash on the same day and he said to transfer the remaining amount in the Bank account given by him and he said that you tick mark only 25 questions in the examination which you know and you leave the remaining blank and it is my job to get you more marks in the paper. Then after taking rupees two lakhs fifty thousands and the photocopies admit card and aadhar card of me and Rahul and while saying that give remaining amount soon, the he left. Then I transferred an amount of rupees lakhs twelve fifty thousands from the Bank account of my known

person Mukesh i.e. Bank Account No. 10801722727 to the Bank Account No. 20263043717 of Nitin Yadav on 7.1.2021 and said that the remaining amount shall be given after being recruited. I and Rahul in the examination of Gram Sachiv as per the instructions of Nitin Yadav answered some questions and left the remaining paper blank, but we were not appointed as Gram Sachiv and we demanded our money back from Nitin Yadav and he said that posts for Sub Inspector and Constable have been advertised in the Haryana Police and I shall get you appointed as Sub Inspector in the Police and in case you know anyone else I shall get them recruited as constable in the police after taking money. I again believed on Nitin Yadav and in order to get the known persons of me and Rahul recruited as constable in the police and for getting me recruited as Sub Inspector gave money separately rupees seven lakhs from the Account No. 10575753658 of Jagdish Chand son of Ganga Jal rupees five lakhs from the Account No. 30414391503 of Rahul Yadav son of Shri Sube Singh, rupees seven lakhs fifty thousand from the Account No. 36974365504 of Manoj Kumar son of Shri Ram Bhagat, rupees four lakhs from the Account No. 46744001500056390 of Shri Hari Om son of Shri Krishan, rupees eight lakhs fifty thousand from the account No. 3290000102120080 of Sant Lal son of Shri Hari Singh, rupees seven lakhs forty thousand from the Account No. 82630100008912 of Mann Singh son of Shri Chandgi Ram in the Account Nos. 00000040230349290 and 20263043717 and on the asking of Nitin Yadav answered some questions of the police recruitment paper and left the remaining questions blank, but despite taking so much money and despite giving so much assurance, Nitin and Yadav did

not get us or persons who knew us recruited in the police and after that Nitin Yadav took more money in cash from us for getting recruited in the recruitment of Group-D. However, Nitin Yadav despite taking rupees seventy two lakhs fifty thousand did not get us recruited as Gram Sachiv or police or Group-D and did not return our money despite asking and Nitin Yadav under a well planned conspiracy by enticing me on the pretext of saving income tax entered into an agreement with me regarding sale of one vehicle MP-14-PA-1916 for an amount of rupees forty seven lakhs by adding the aforesaid rupees forty five lakhs. Two cheques of rupees three lakhs each have been given to us as guarantee. In this manner Nitin Yadav by taking us in confidence under a well planned conspiracy has misappropriated an amount of rupees seventy lakhs two fifty thousand for getting us and our known persons job. When we asked Nitin Yadav for our money, he threatens to kill us and says that I have links with big officers and politicians and nobody can cause any harm to me. Strict action be taken against Nitin Yadav and FIR be registered and our money be got returned. We shall be highly obliged. Sd/- Bharat son of Shri Amar Pal, resident of House No. 589, Krishna Colony, Palwal. 85700 39923, 99916 54217.”

3. After the registration of the FIR, the statement of the complainant and his father Amar Pal were recorded under Section 161 Cr.P.C. The complainant-Bharat stated that his friend Rahul Yadav and Kapil had also applied for the post of Gram Sachiv and Kapil had got transferred money into the account of the petitioner. Similarly, Parveen Sharma had got transferred money into the account of the petitioner on his (complainant's) asking. Rahul Yadav had also got transferred money

into the account of the petitioner. As the said exam for the post of Gram Sachiv had been cancelled, the petitioner had asked him (complainant) and his friends to apply for the post of Sub-Inspector and Constable with the Haryana Police. His friends had done the needful and for the said appointment Deepak son of Jagdish Chandar had got transferred money into the account of Nitin Yadav (petitioner) along with Rahul Yadav son of Sube Singh, Manoj Kumar son of Ram Bhagat, Hari Om son of Shri Krishan, Sant Lal son of Hari Singh and Maan Singh son of Chandgi Ram. All of them had taken the Haryana Police Exam but did not obtain a job despite having paid the petitioner. Thereafter, a further amount had been paid by Rahul Yadav for getting a job in the Group-D Exam. However, no one was appointed either as a Gram Sachiv, in the Police Department or in pursuance to the Group-D Exam. The money was also not returned. However, with an intention to save income tax, the petitioner had entered into an agreement to sell showing the purported sale of a vehicle in his (complainant's) name.

During investigation, the bank statements of Nitin Yadav (petitioner) were obtained and the statements of various other aggrieved persons were recorded under Section 161 Cr.P.C. including Mukesh Kumar son of Gyan Chand and Jagdish Chandar son of Ganga Lal who disclosed the manner in which the money had been transferred to the petitioner.

4. The learned counsel for the petitioner contends that he has been falsely implicated in the present case. The dispute was only regarding the sale of a vehicle. As the case was based on documentary

evidence and he was ready and willing to join investigation, he was entitled to the concession of anticipatory bail.

5. A status report dated 02.02.2024 by way of an affidavit of Jashandeep Singh Randhawa, IPS, Superintendent of Police, Ambala has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He along with counsel for the complainant while referring to the replies dated 23.02.2023 and 02.02.2024 contend that the investigation conducted so far clearly reveals that the petitioner took a huge amount of money from the complainant and other persons amounting to Rs.72.5 lakhs to get them appointed either as Gram Sachivs, in the Police Department or in the Group-D services. The statements of various persons have been recorded who have disclosed the manner in which the payments had been made to the petitioner. Further, when this Court had not been inclined to grant the concession of anticipatory bail to the petitioner, he had stated that he wished to effect a settlement. The parties were directed to appear before the Mediation and Conciliation Centre of this Court where a compromise had been arrived at between the parties. However, even the terms of the said compromise had not been complied with. Therefore, the nature of the allegations against the petitioner as also his conduct in not adhering to the terms of the compromise did not entitle the petitioner to the grant 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. A perusal of the investigation conducted so far clearly establishes that the petitioner received a huge amount of money from the complainant and other persons for Government employment in various departments. Quite obviously, the aggrieved persons were not appointed and the money was also not returned. In order to save himself, he entered into an agreement to sell of his vehicle in order to obfuscate the issue. When this Court had not been inclined to grant bail to the petitioner, he had stated that he wished to compromise the matter. Despite a compromise having been arrived at before the Mediation and Conciliation Centre of this Court, he has not adhered to the conditions of the same. Further, the petitioner is an accused in FIR No.433 dated 07.08.2021, U/s 420, 467, 468, 471, 120-B IPC, P.S. City Kaithal, FIR No.439 dated 13.08.2017, U/s 420, 468, 471, 120-B IPC, P.S. Sadar Kurukshetra and a convict in a case arising out of FIR No.146 dated

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04.07.2009, U/s 376/120-B, P.S. Kanina Rewari. He also has been acquitted in four cases. Therefore, the criminal antecedents of the petitioner along with the fact that the offence stands *prima facie* established against him and the investigation is to be taken to its logical conclusion, his custodial interrogation 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

02.02.2024
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No