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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-15043-2024 (O & M)
Date of decision:19.04.2024

Mohd. Yousuf

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aezaz Ahmed, Advocate,
with Imtiyaz Hussain, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

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.862 dated 17.09.1998 under Section 420 IPC registered at Police Station NIT, Faridabad, District Faridabad.

2. The brief facts of the case are that the present FIR was registered on the complaint of Sanjay Kapoor, who had alleged that on 14.09.1998, one Juban Khan came to his jewellery shop and told him that he had a gold idol, which he offered to sell to him for Rs. 4 lakhs, upon which he accompanied by Juban Khan visited village Pachanka, where 3 other boys were also present, whose names he did not know. Thereafter, he made part payment of Rs. 2 lakhs, however, it was agreed that remaining payment of Rs. 2 lakhs would be made at the house of Juban Khan at village Badkhal. When he brought the said idol to Faridabad and checked the same, it was found as fake with minor proportion of gold, whereas its remaining proportion were

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of brass. Next morning, when he reached at the house of Juban Khan, he was surprised to find no body there and later on he came to know that he had been duped by Juban Khan and three others. Accordingly, on the basis of aforesaid facts, the present FIR No. 862 dated 17.09.1998, under Sections 420, 34 IPC, Police Station Faridabad Kotwali, District Faridabad, was registered.

3. During the course of investigation, Jaan Mohammad @ Juban Khan was arrested on 25.09.2018 and disclosed the names of his other co-accused as Aalam, Shorab, Yousuf (petitioner) and Rajjak. As Aalam was already in custody in FIR No. 282/1999 under Section 420 IPC, Police Station Hathin, District Palwal, he was arrested in the present case on 08.02.2020. He was granted regular bail by the Trial Court and was subsequently declared a proclaimed person on 19.05.2007.

The petitioner was also declared a proclaimed person on 17.04.2000, which order, however, stands stayed by this Court vide order dated 15.03.2024 (P-4).

However, Shorab and Rajjak were declared proclaimed persons and thereafter, vide order dated 19.04.2010, proceedings under Section 299 Cr.P.C. were initiated and the case was adjourned *sine die*.

Meanwhile, co-accused/Jaan Mohammad @ Juban Khan was acquitted by the Court of the Judicial Magistrate Ist Class, Faridabad vide order dated 24.05.2013 (Annexure P-3).

Co-accused/Rajjak was granted the concession of regular bail on 29.01.2024 whereas co-accused/Aalam was also granted the similar concession.

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4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He has been named in the disclosure statement of Jaan Mohammad @ Juban Khan who has since been acquitted. As the petitioner was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail, moreso, when the order whereby had been declared a proclaimed person stood stayed.

5. The learned counsel for the State, on the other hand, as filed a reply dated 12.04.2024 which is taken on record. While referring to the said reply, he contends that the petitioner was named in the disclosure statement of Jaan Mohammad @ Juban Khan. As per the investigation conducted so far, the petitioner alongwith others acted in conspiracy with Jaan Mohammad @ Juban Khan. He had been absconding since 17.04.2000. Though, the said order had been stayed, the nature of the allegations levelled against the petitioner and his conduct did not entitle him to the concession of anticipatory bail even though, his co-accused had been acquitted as the Trial qua the petitioner had been segregated.

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

7. In '***State of Haryana versus Dharamraj, (Crl. Appeal No. of 2023 arising out of SLP (Crl.) No.2256/2022)***', the Hon'ble Supreme Court has held as under:-

16. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. Looking to the factual prism, we are clear that the respondent's application under Section 438 CrPC should not have been entertained, as he was a proclaimed offender. We may note that in Laves v State (NCT

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of Delhi), (2012) 8 SCC 730, this Court was categoric against grant of anticipatory bail to a proclaimed offender. In the same vein, following Lavesb (supra) is the decision in State of Madhya Pradesh v Pradeep Sharma, (2014) 2 SCC 171, where this Court emphasised that a proclaimed offender would not be entitled to anticipatory bail. Of course, in an exceptional and rare case, this Court or the High Courts can consider a plea seeking anticipatory bail, despite the applicant being a proclaimed offender, given that the Supreme Court and High Courts are Constitutional Courts. However, no exceptional situation arises in the case at hand. Following Pradeep Sharma (supra), in Presh Shankar Prasad v State of Bihar,, 2021 SCC OnLine SC 955, this Court was unequivocal that the High Court therein erred in granting anticipatory bail ignoring proceedings under Sections 82 and 83, CrPC. In Abhishek v State of Maharashtra, (2022) 8 SCC 282, this Court concluded:

‘68. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an “absconder” and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 Cr.PC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of Section 438 Cr.PC. [For example, Prem Shankar Prasad v. State of Bihar, (2022) 14 SCC 529: 2021 SCC OnLine SC 955] ...’

8. A perusal of the record would reveal that Jaan Mohammad @ Juban Khan was arrested and disclosed the name of the present petitioner alongwith with others. Though, the arrested accused stands acquitted, a separate Trial is required to take place against the petitioner. Further, he has been absconding since 17.04.2000 and though, the said order had been stayed, the conduct of the petitioner does not entitle him to the concession of

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anticipatory bail. In fact, the Hon’ble Supreme Court of India in ‘*State of Haryana versus Dharamraj, (Crl. Appeal No. of 2023 arising out of SLP (Crl.) No.2256/2022)*’, has categorically held that the anticipatory bail petition of a proclaimed offender should not be entertained.

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

10. 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

April 19, 2024
sukhpreet

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