IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

(THROUGH VIDEO CONFERENCING)

CRM-M-13210-2023

Date of Decision:-15.02.2024

Neeraj Kumar.

......Petitioner.

Vs.

State of Haryana.

......Respondent.

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

Present:- Mr. Tarun Dhingra, Advocate for the Petitioner.

Mr. Ravish Kaushik, Additional Advocate General, Haryana.

***

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.582 dated 27.11.2021 under Sections 406, 420, 120-B IPC registered at Police Station Thanesar Sadar, District Kurukshetra.

2. The present FIR came to be registered at the instance of Balkar Singh son of Sh. Hazara Singh which reads as under:-

> " *An application No. 4390-MISC dated 29.09.2021 was received from Incharge Special Detective Unit Police Line Kurukshetra through Post Office, Superintendent of Police Kurukshetra in the police station which is as follows:- To, Superintendent of Police Subject: application against 1. Bharat Bhushan Mobile No. 09758662308 9311089951 2 Renuka Mobile No. 0 7042151950, 3. Kadam Mobile No. 07042011629, 4. Prabhakar Chaudhary Mobile No. 07579671952, 5. Raghuvanshi Mobile No. 09311096224, 9311312461 about cheating of 90,00,000 (ninety lakhs) with the applicant to take legal action getting the location of the*

culprits from the mobile numbers to register the case and to arrest the culprits. Sir, the applicant prays as follows: 1. That the applicant is a resident of village Ratandera, tehsil Thanesar, district Kurukshetra, who is peace loving and law abiding person. 2. That the applicant had taken the insurance policy of Max Life Insurance. The applicant had received the money for this policy. That a few days after the completion of this max life insurance policy of the applicant, accused No. 01 Bharat Bhushan called on the applicant's mobile number 9813267586 and told the applicant that I am the officer of the IGMS policy department and told the applicant that your outstanding balance of Rs.3,22,000/- of Max Life Insurance Policy and said that you will get Rs.6,22,000/- after depositing this outstanding amount in our account. That the applicant, trusting the said accused On dated 07.08.2020 complainant transfer the amount 3,22,000/- from his account no. 914010015251809 Axis Bank Branch Beed Pipli Kurukshetra and ICICI Bank Branch Pipli Kurushetra Account no. 093401000566 through RTGS in the Bank account no. 093401000566 of Naveen kumar Gautam co-accused and after that one of the accused no. 1 told that you will be given pension of Rs. 15,000/- through R.B.I. After sometime complainant get the pension of 15,000/- After that accused No. 1 called up the applicant and said that now you will have to transfer more money from accused No. 1 applicant to the account of Naveen Kumar Gautam complainant transfer total amount of Rs. 63,00,000/- in the account of Naveen Kumar Gautam through RTGS on different dates. 4. That after that accused No. 1 to 5 called the applicant and said that the manager of our company has been transferred and the tax has also increased, now you have transfer Rs 18 lakh through RTGS. 5. That the accused No. 2 called up the applicant and informed that our manager is unwell and now you deposit the amount of Rs. 12,65.000/- on different dates through RTGS in the bank account of Kritka Narula's Fincare Bank Account no. 18100009307008. 6. That after that the accused told the applicant that you will get FD of Rs.7.20,000/-. By taking OTP from the applicant's phone to the account of Neeraj Kumar, the applicant transferred Rs 7,20,000/online. The applicant, taken into confidence in the trust of the accused, used to transfer money from his account to the accounts of the accused as per their instructions. 7. That the accused No. 01 got Rs.7,20,000/- transferred through RTGS from the account of the applicant to the account of Shalini Kumar and

> *thereafter Rs.2,70,000/- in the HDFC Bank account of Jairam./ through RTGS. 8. That Rs.15,000/- pension has been given to the applicant by the accused through Paytm. There is no mention of any kind of pension in the applicant's account and the accused had told the applicant that in this policy insurance cover of 5-5 lakhs will be given for you husband and Wife. 9. That the accused assured the applicant that we will transfer all payments to your account soon, but the accused given false assurances to the applicant that now is the time of Corona and RBI does not have funds, you are now Wait, after which the pension of Rs.15,000/- issued to the applicant by the accused was also stopped. The applicant has now suspected that the said accused have cheated the applicant to the tune of about Rs.90,00,000/- by conspiring with trap. In this whole matter, the hand of the international gang, who is a very cunning type of person. The accused have switched off their mobile phones. Due to which the applicant is mentally disturbed. Therefore, you are requested to find out the location of the accused by tracing the mobile numbers of the said accused, keeping in view of above facts and a case of fraud of 90,00,000/- (ninety lakhs) with the applicant be registered against the accused and get the applicant's Rs 90 lakh back from the accused. The applicant should be given justice. It will be so kind of you. With thanks. The applicant Sd/Balkar Singh.*"

3. One Naveen Kumar Gautam was arrested in the present case on 15.02.2023 and Ajit Partap Singh was arrested on 16.02.2023. During investigation, it came to light that an amount of Rs.36,02,249/- had been transferred in the bank account of the petitioner & Ors. and Rs.35,30,278/- had been withdrawn. Further an amount of Rs.7,20,000/- was found transferred in the account of the petitioner. A sum of Rs.3,30,000/- was withdrawn by the petitioner through self cheque no.320813 dated 05.11.2020. Therefore, it was found that the petitioner was *prima facie* the main accused.

4. The Counsel for the petitioner contends that he has been falsely implicated in the present case. The allegations levelled in the FIR did not

fulfill the necessary ingredients to prove the offences in question. As the petitioner was ready and willing to join investigation, he was entitled to the concession of bail.

4. The Counsel for the State on the other hand has filed reply by way of an affidavit of Mr. Rajat Gulia, DSP Pehowa, Kurukshetra in the court today, which is taken on record. While referring to the said reply he contends the petitioner is one of the main accused. A huge amount of money had been transferred in his account which he later withdrew. The offence was *prima facie* established and the investigation had to be taken to its logical conclusion. Therefore, the custodial interrogation of the petitioner was certainly necessary and he was not entitled to the concession of anticipatory bail.

5. I have heard learned Counsel for the parties.

6. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***'', 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 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***".

7. A perusal of the investigation conducted so far would establish that Naveen Kumar Gautam and Ajit Partap Singh were arrested. They admitted to have committed the offence in question in connivance with the petitioner. An amount of more than Rs.36 lacs was transferred in the bank account of the petitioner and his co-accused. The petitioner also withdrew a sum of Rs.3,30,000/- through a self cheque. Even otherwise, the petitioner is a habitual offender with two other cases of a similar nature registered

against him bearing FIR No.381 dated 21.07.2022 under Sections 406, 420, 120-B IPC P.S. City Ambala and FIR No.364 of 2021 under Sections 419, 420 IPC and Section 66-C and D of I.T. Act P.S. Cyber Crime, D.D. Hyderabad, Telengana. As the offences stand *prima facie* established and the investigation has to be taken to its logical conclusion no case for grant of anticipatory bail is made out.

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

9. However, the observations made hereinabove are only for the purposes of deciding this anticipatory bail petition 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

February 15, 2024
Vinay

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