IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(215)

CRM-M-15369-2024 (O & M)
Date of decision:16.05.2024

Chandan Sharma ..... Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Akshay Kumar Dahiya, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Jashan Singh Sekhon, Advocate,
for Mr. Shiv Kumar, Advocate,
for the complainant.

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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.41 dated 22.01.2024 under Sections 406, 420 and 506 IPC registered at Police Station Sector 8, Faridabad.

2. The present FIR came to be registered at the instance of Vijay Sharma and and reads as under:-

"TO SHO, P.S Sector 8, Faridabad. Sir, it is prayed that 1 Vijay Sharma S/o Krishan Sharma R/o H.no. 2233, Gali No.12, B Block, SGM, Nagar, NIT Faridabad. I have an Account No. 10007432713 in IDFC bank in Sector 16 Market, Faridabad. This account was open by Chandan, Money Transfer in 2017 beneath Bata Flyover, whose mobile no is 7838721213, I have sold my land in village Kasandi, Sonipat for 15 lac rupees and have taken Rs. 1 lac in cash and Rs. 4 lac on 27.11.2018 and Rs. 10 lac on 03.12.2018 were deposited in

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my above mentioned bank account. The cheques were given to Chandan Sharma to deposit the said cheques and the amount came in my bank and on my asking, Chandan transferred Rs.1 lac to my wife Mithilesh's account on 03.12.2018 and after that on 05.12.2018 he transferred Rs.30,000 in my wife's account, and when I checked balance in my account, there was no money in the account, after that I asked Chandan Sharma about my money, then he said that your money is in your account after that I visited IDFC bank myself at Sector 16 and upon inquiry, I was told that your link mobile number has been changed 2 times and from the same number, your money has been transferred. After that I went to Chandan Sharma and said that you have taken all the money from my account and I will make a complaint against you to the police. On that Chandan Sharma told me you can go wherever you want, all your money is taken out by me and if you come here again I will kill you. Chandan Sharma has fraudulently taken out all the money from my account. Hence, it is requested that legal action be taken against him. Thank you".

3. During the course of investigation, record was obtained from IDFC Bank, Sector 16, Faridabad. It was revealed that the account bearing No.10007432713 in the name of of the complainant with IDFC Bank, Sector 16 Market, Faridabad, was opened by Chandan Sharma, Money Transfer (petitioner) in the year 2017 and mobile No.9599131436 was given at the time of opening the said account. As per the complainant, the said mobile phone number was registered in his name but as per the record of the Cellular company, the said mobile phone number was found to be registered in the name of Sumit Kumar son of Baljit Singh, resident of Uttar Pradesh as on 28.10.2022. An amount of Rs.14 lacs was found credited in the said bank account.

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It transpired that 11 transactions had been made by the petitioner-Chandan Sharma vide which an amount of Rs.12,61,995/- had been found transferred in his two accounts with IDFC Bank, Sector 16, Faridabad, bearing account No.10006818584 and another account No.10006820886 from the account of complainant bearing No.10007432713 with the same bank.

During investigation, it was also revealed that a new mobile No.9213406525 had been found updated in the bank account of the complainant bearing No.10007432713 with the IDFC Bank on 10.08.2021. The said mobile number was found registered in the name of Mahender Kumar son of Ramesh Chand, resident of Faridabad.

4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. In fact, the petitioner and the complainant were close friends and the petitioner was operating an authorized CSC Centre for IDFC bank in Faridabad and an amount of Rs.8.5 lacs had been extended as a loan to the petitioner from the complainant's bank account and the petitioner had also given two cheques to the complainant as security. The petitioner was regularly paying instalments in cash and the same was recorded in a register. When the petitioner asked the complainant to return the said security cheques against the full and final payment of the loan, the complainant refused to return the same and demanded more money. There was unexplained delay of about 06 years in the registration of the FIR. However, taking the allegations to be correct, the dispute was of a civil nature. As the petitioner was ready and willing to join the investigation and had also done so earlier, he was entitled to the concession of anticipatory bail.

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5. The learned counsel for the State alongwith the counsel for the complainant, on the other hand, while referring to the reply dated 16.04.2024, contend that it is established beyond any doubt that more than 12.50 lacs was siphoned off from the account of the complainant into the accounts of the petitioner. In fact, the complainant was an illiterate person and the account in question was being managed by the petitioner. As the offence was *prima facie* established and the investigation was to be taken to its logical conclusion, the petitioner 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(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 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*

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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 FIR and the investigation conducted so far would show that a sum of Rs.14 lacs had come into the account of the complainant and by way of 11 transactions, a sum of Rs.12,61,995/- had been transferred into the different bank accounts of the petitioner by the petitioner himself for which there is absolutely no plausible explanation.

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Therefore, the offence is *prima facie* established. Further, to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly necessary.

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

May 16, 2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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