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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-15964-2024

Date of decision : 09.08.2024

RAVI SARAF & ANOTHER

... Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Randeep Singh Waraich (Rana), Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

Mr. Rajat Malhotra, 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 petitioners in case FIR No.0020 dated 01.03.2024 (Annexure P-1) registered under Sections 420 and 120-B IPC, 1860 at Police Station Division No.3, District Police Commissionerate, Ludhiana.

2. The present FIR came to be registered on the basis of a complaint at the instance of Sumita Saraf wife of late Hemant Saraf with the allegations that after the death of her husband on 31.10.2011 the accused by preparing forged documents had withdrawn a sum of Rs.27,50,000/- lying in the account of M/s Tanish Textiles of which the deceased was the owner and had transferred the same into the accounts of a firm constituted in the name of petitioner No.2-Ritu Saraf. Further,

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other FDRs in the account of the deceased were credited in the accounts of the petitioners who had constituted new firms of which they alone were proprietors. Family properties had also been usurped. As legal proceedings have been initiated by the complainant, a compromise was arrived at but the accused backed out from the same. Therefore, the complaint was being filed.

3. Based on the complaint filed, an inquiry took place culminating into the registration of the FIR.

4. The petitioners sought the concession of anticipatory bail and the same declined by the Court of the Addl. Sessions Judge, Ludhiana vide order dated 19.03.2024. The copy of the said order is attached as Annexure P-9 to the petition.

5. The instant petition has been filed challenging the aforementioned order of dismissal of the bail petition.

6. The learned counsel for the petitioners contends that the amount had been withdrawn by the father of the petitioners as he was a power of attorney-holder of the deceased. As M/s Tanish Textiles was suffering losses and owed a sum of Rs.1,15,00,000/- to another firm, Satish Saraf father of the petitioner No.1 and father-in-law of the complainant had withdrawn a sum of Rs.27,50,000/- with a view to satisfy that debt. In fact, the dispute was between family members and multiple civil proceedings had been pending some of which had been withdrawn. The complainant was a quarrelsome lady who did not follow the rules and regulations of the family and separated herself along with

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her children after the death of her husband. Under the terms of the compromise arrived at, while the petitioners had fulfilled some of the terms of the compromise, they were unable to fulfill the others on account of the obstinacy of the complainant who had not fulfilled her part of the terms of the compromise. As the FIR had been registered after a gap of so many years and the petitioners had joined investigation, they were entitled to the concession of anticipatory.

7. On the other hand, the learned counsel for the complainant contends that pursuant to the death of the husband of the complainant a sum of Rs.27,50,000/- had been transferred into a new account in the name of petitioner No.2-Ritu Saraf. Similarly, multiple FDRs were encashed with the aid of bank employees and the money was transferred to the petitioners. Thus, there had been misappropriation of the funds rightfully belonging to the complainant and her children by the petitioners. The complainant had initiated domestic violence proceedings against her in-law's family and a restraining order was passed against the accused in March, 2015 on the basis of the complaint filed in August, 2012. A suit for partition had also been filed. Alongside, an application under Section 156(3) Cr.P.C. was filed before the Illaqa Magistrate seeking registration of the FIR. The accused were summoned to face Trial under Sections 406 and 506 IPC on 15.12.2017. However, with a view to evade their liability, the accused had proposed a compromise promising to transfer properties and pay due amounts to the complainant and her children. Based on the compromise, the



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complainant had withdrawn her suit and complaint only to find that the accused had reneged on the terms of the compromise. It was in that situation, that a complaint was filed which had culminated in the registration of the instant FIR after a report of the District Attorney was obtained. Therefore, it was improper to assert that the FIR had been registered after a delay of 13 years. As the allegations against the petitioners stood *prima facie* established and the petitioners had chosen not to comply with the terms of the compromise, they were not entitled to the concession of anticipatory bail.

8. The learned State counsel has also supported the case of the complainant stating that the conduct of the petitioners in firstly committing the offences in question, thereafter entering into a settlement and not choosing to honour the same did not entitle them to the grant of anticipatory bail.

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

10. 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***



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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.

11. A perusal of the record would reveal that on 05.04.2024, the petitioners were granted the concession of interim bail on account of the fact that the matter had been settled between the parties as was evident from the statement of the complainant recorded before the National Lok Adalat, Ludhiana. On 24.07.2024, during the course of hearing the counsel for the parties stated that their clients would honour the terms of the agreement (Annexure P-6) and the same would be acted upon by 07.08.2024 i.e. today.

12. Despite the undertakings of the parties, it is apparent that the petitioners for obvious reasons have not honoured the terms of the compromise. The counsel for the petitioners was repeatedly asked in Court while referring to the terms set out in Annexure P-6 as to which of the conditions had been satisfied by the petitioners. The response was either that all the terms had been fulfilled or that the terms had not been fulfilled because the complainant had chosen not to fulfill her part of the compromise. No clear response has been given with respect to the specific query of the Court. Apparently, the petitioners are playing hide and seek. The background of the case is that after the death of the husband of the complainant in October, 2011, the complainant was



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forced to initiate proceedings under the Domestic Violence Act. Other civil proceedings seeking her share of the property and also criminal proceedings for defalcation of the FDR amounts by the petitioners were also initiated. The proceedings had culminated in a settlement pursuant to which the complainant had withdrawn some of the cases filed by her. However, the petitioners have apparently not fulfilled their terms of the compromise. Therefore, as the petitioners have *prima facie* committed the offences in question qua a widow and her children and thereafter reneged on the terms of the settlement, they are not entitled to the concession of anticipatory bail.

13. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

14. 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

09.08.2024
JITESH

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