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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(218)

CRM-M-17919-2024 (O & M)
Date of decision:16.05.2024

Yugwinder Singh Brar Petitioner

V/s

State of Punjab ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amandeep Chhabra, Advocate,
for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

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.29 dated 05.02.2023 under Sections 420, 406, 120-B IPC registered at Police Station Civil Lines, District Bathinda.

2. The brief facts of the case are that a complaint was made by Harpreet Singh son of Kewal Singh and Mandeep Kaur wife of Harpreet Singh and reads as under:-

“Copy of Application No. 793/Miscellaneous/2022. dated 20.09.2022. To, Hon'ble S.S.P. Sahib, Bathinda Subject: Application/complaint against Amandeep Kaur wife of Baljit Singh, (97800-11624, 77197-02611) and Baljit Singh son of unknown, resident of Jogi Nagar, Street No: 5/13,



::2::

Bathinda 76968-97181 and Beant Kaur wife of Sukhveer Singh, resident of Chak Ram Singh, 99889-72770 in connection cheating of Rs. 42.44 in the name of sending abroad and return of passport. Respected Sir, I requested that said accused works together to send people abroad and in the past, he was taken responsibility given us PR in Canada and an amount of Rs. 42.44 lacs has been taken from us in this regard, some of which was given through my father's bank account and some amount through my brother-in-law (jija) Harjinder Singh's account in the accounts of the accused and some in cash. After this, we have not been sent abroad till today and when we say it again and again, the accused are making lame excuses and sometimes they are making some excuses every time. Now the accused are threatening to implicate us in a false case so that we do not take any action against them. By submitting an application, it is requested that appropriate legal action be taken regarding the said matter and our life and liberty be protected by returning our amount given to us and against the accused for cheating, showing subterfuge, threatening, attempting to cause harm and lying. Action should be taken against the charges of speaking etc. and justice should be given and the passports, which are currently in the possession of the accused, should be returned. We will be very thankful. Yours faithfully SD/-Harpreet Singh, Mandeep Kaur”.

3. Based on the aforementioned complaint, an enquiry was conducted and pursuant thereto the aforementioned FIR came to be registered against the petitioner, Beant Kaur, Naresh Kumar and Gaurav Kumar. The role of Amandeep Kaur was to be examined during the course of the investigation.

Pursuant to the registration of the FIR, Beant Kaur was declared



::3::

on 19.03.2023. She was joined in the investigation by way of production warrants and disclosed that she had handed over the original passports of the complainants to the petitioner, the owner of National Consultant, Top Immigration & Visa Consultant at Chandigarh.

It also surfaced during the course of investigation that accused- Amandeep Kaur (Account No.1721239812300725) had transferred the amount in account No.920020048627570 in the name of National Consultant, Top Immigration & Visa Consultant operated by Naresh Kumar and Gaurav Kumar and they used to transfer money from their bank accounts into the bank account No.920010031556055 of the petitioner with the Axis Bank.

4. The learned counsel for the petitioner contends that the petitioner's name does not find mention in the original complaint filed by the complainants. His name surfaced during the course of the enquiry. Taking all the allegations to be true, no amount of money was received in the account of the petitioner. He has been roped as an accused with the aid of Section 120-B IPC only. As the petitioner was ready and willing to join the investigation, he was entitled to the concession of bail.

5. The learned counsel for the State, on the other hand, while referring to the affidavit dated 07.05.2024 contends that during the course of the enquiry and thereafter, during investigation, it transpired that the money received by Amandeep Kaur had been transferred by her to the petitioner, Naresh Kumar and Gaurav Kumar. A huge amount of approximately Rs.39 lacs had been misappropriated. As the offence was *prima facie* made out and the investigation was to be taken to its logical conclusion, the



::4::

custodial interrogation of the petitioner was certainly required and therefore, he 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 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,***



::5::

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 record would reveal that the complainants were duped of approximately Rs.39 lacs on the pretext of sending them abroad. As per the investigation conducted so far, Amandeep Kaur received the amount which she further transferred to the petitioner, Naresh Kumar and Gaurav Kumar. Therefore, *prima facie*, the offence stands established against the petitioner. Further, to effect recoveries and to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required.

9. In view of the above, I find no merit in the present petition.

Therefore, the same stands dismissed.



::6::

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
sukhpreet

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