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**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.30111 of 2024
Date of Decision: 18.06.2024**

Balwinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Mohit Jaggi, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.0036, dated 24.03.2023, under Sections 66(D), 73 and 74 of Information Technology Act, 2000, registered at Police Station Division No.4, District Patiala.
2. Adumbrated facts of the case are that on the basis of letter received from the Deputy Superintendent of Police/V&S office of ADGP/V&S, PSPCL, Patiala for registration of the case against Balwinder Singh, it was brought to the notice of Chairman-cum-Managing Director, PSPCL, Patiala that Deputy Secretary/General, PSPCL, Patiala had written to the office of Chief Engineer/Border Zone, Amritsar for appointing three persons, namely, Satnam Singh, Maninder



Singh and Hukum Chand on contingent basis, which was received in the office. It was written that the office of Deputy Secretary, PSPCL, Patiala had neither issued the above said letter nor it carried the dispatch number of general section. This letter was not found in the diary as per the office record and thus, finding that the letter issued fake and forged by some mischievous persons, a request was made to register the case for taking the legal action. On the basis of same, FIR was registered and the investigation commenced. During the investigation, the complicity of the petitioner was *prima facie* established and thus apprehending his arrest, he approached the Court of learned Additional Sessions Judge, Patiala for the grant of anticipatory bail. However after hearing both the sides, the learned Additional Sessions Judge, Patiala declined the same vide his order dated 06.06.2024. Hence the petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case without any reason. It has been submitted by learned counsel for the petitioner that no offence under the Indian Penal Code is made out against the petitioner rather the petitioner himself filed a complaint against one Bhim Sain, who was convicted by the learned Judicial Magistrate Ist Class, Patiala vide his order dated 04.10.2023. He submits that on the basis of allegations that the petitioner had forwarded one letter from his mobile to Maninder Singh, no offence is made out against the petitioner. He



submits that no case for custodial interrogation is made out against the petitioner and thus, he deserves to be granted anticipatory bail.

4. Notice of motion.

5. On asking of the Court, Mr. Navneet Singh, Sr. DAG, Punjab appears and accepts notice on behalf of the respondent-State. He has opposed the submissions made by learned counsel for the petitioner and has submitted that complicity of the petitioner has been *prima facie* established in the present case. He submits that for the fair and free investigation, custodial interrogation of the petitioner is required and thus, there being no ground in the petition filed by the petitioner for grant of anticipatory bail, the same deserves to be dismissed.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is apparent that FIR was registered on the basis of allegations that forged and fabricated letter was issued regarding the contingency appointments of three persons, namely, Satnam Singh, Maninder Singh and Hukum Chand. However it was found that neither the said letter was issued by the authorized Department nor it was dispatched. No record regarding the letter was found and thus, FIR was registered for taking the legal action. During the investigation, it was found that soft copy of the letter was available on the *whats app*. This soft copy was sent by the petitioner from his mobile to one Maninder Singh. During the inquiry, it had come on the record that a Committee was formed by persons seeking employment on compassionate ground and one Bhim Sain was the



Chairman of the Committee. The letter issued to three persons was found to be forged and as already mentioned, this was sent from the mobile of petitioner to Maninder Singh. The case is under investigation.

8. The contentions raised by learned counsel for the petitioner are without any force. For free and fair investigation, custodial interrogation of the petitioner would be required.

9. For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) *Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-*

- (i) *the nature and gravity of the accusation;*
- (ii) *the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- (iii) *the possibility of the applicant to flee from justice; and*
- (iv) *where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”*

As per the law settled by the Hon'ble Supreme Court, in ***Gurbaksh Singh Sibbia Vs. State of Punjab***, AIR 1980 SC 1632, while granting anticipatory bail, the Court is to maintain a balance between the



individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31. *In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622,*



which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

The Hon'ble Supreme Court in ***State Vs. Anil Sharma***, (1997) 7SCC 187, held as under:-

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct



themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioner has been prima facie found. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

In view of the overall facts and circumstances of the case, the petitioner do not qualify for the grant of anticipatory bail and the same is hereby dismissed on merits. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

18.06.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No