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

**CRM-M No.30137 of 2024
Date of Decision: 18.06.2024**

Udhay Kumar Chaudhary

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Govind Chauhan, 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.0174, dated 08.05.2024, under Sections 7 & 14 of Foreigners Act, 1946, Sections 3, 4 & 7 of Immoral Traffic (Prevention) Act, 1956 and Sections 186, 332 & 353 of Indian Penal Code, 1860, registered at Police Station Sector 56, Gurugram (Annexure P-1).

2. Adumbrated facts of the case are that the present FIR was lodged on the statement of Inspector SHO Vinod Kumar. The complainant was informed by the Assistant Commissioner of Police that information was received from the Chief Minister Flying Squad that flesh trade was being carried on in Hotel Rao Estate, House No.3206, G-



Block, Sector 57, Gurugram. As per information received, local and foreign girls were provided for Rs.10,000/- to 11,000/- to each customer by Uday Kumar Chaudhary i.e. the petitioner and if the immediate raid is conducted, then the offenders could be caught red handed. The Assistant Commissioner of Police wrote a letter to Deputy Commissioner of Police (E), Gurugram on 07.05.2024 and obtained permission for conducting the raid. A team was constituted by the Assistant Commissioner of Police, Head Quarter, Gurugram. The police personnel were informed about the raid and fake customer EHC Dharam Prakash was sent at the informed place. The currency notes of Rs.500/- each, totaling Rs.11,000/- were kept for identification. Resultantly, the raid was conducted and on getting the call from the fake customer, the girls involved in the prostitution and other offenders were arrested by the Raiding team. However the main accused, namely, Udhay Kumar Chaudhary i.e. the petitioner was not found on the spot. It was found that he was using Mobile No.9899128447 for deciding the rates of girls with the customers. It was found that Dilbag, Sanjay, Udhay Kumar Chaudhary (petitioner), Sanjeev, Rambabu, Abhishekh Chaudhary, Suhani Khan, Mona Kumar, Lata Farzana, Marjina Sultana, Khadicha Bano and Ishtara Bano together were earning money from prostitution. The case was registered under Sections 3, 4, 7 of Immoral Traffic (Prevention) Act, 1956, Sections 7 & 14 of Foreigners Act, 1946 and Sections 186, 332, 353 of IPC. The investigation commenced. However the petitioner not having been found at the spot could not be arrested. Apprehending his arrest, the petitioner



filed the anticipatory bail before the learned Additional Sessions Judge, Gurugram. However after hearing both the sides, the learned Additional Sessions Judge declined the same vide his order dated 21.05.2024. 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. He has submitted that neither the petitioner was present at the spot at the time of raid nor he was called or summoned at the spot even after the raid was conducted. He has submitted that the petitioner has been arrayed as an accused in the present case on the basis of secret information received from the unknown source. He submits that the screenshots of the *whatsapp* chat with the contact number 9899128447 filed by the Investigating Officer is not supported by the certificate under Section 65-B of the Indian Evidence Act and thus, there is no evidence against the petitioner for his complicity in the present case. He has submitted that the co-accused have been granted bail by the learned Judicial Magistrate Ist Class, Gurugram vide his order dated 11.05.2024. He has submitted that no case for custodial interrogation of the petitioner is made out from the facts and circumstances of the case. He has further submitted that the constitutional rights of the petitioner as enshrined under Article 21 of the Constitution of India are totally being flouted and thus, the petitioner deserves to be granted anticipatory bail.

4. Notice of motion.



5. On asking of the Court, Mr. Ashish Yadav, Addl. A.G., Haryana 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 there are specific allegations against the petitioner. He has submitted that the secret information was received wherein the name of petitioner has not only been mentioned but he was the main accused. He has submitted that simply because the petitioner is not arrested on the spot is no ground for granting anticipatory bail to him. He submits that in the over all facts and circumstances of the case, the custodial interrogation of the petitioner is essential for the proper investigation of the case. Hence he submits that there being no ground for grant of anticipatory bail to the petitioner, the petition deserves to be dismissed.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is apparent that on receiving the secret information regarding the offence under the Immoral Traffic (Prevention) Act being carried out at the disclosed place, a team was constituted by the Investigating Agencies. Fake customers from the police staff were sent inside the house and on receiving the signals, the raid was conducted at the informed place. From there, the accused including the foreign girls were arrested. During the investigation, it was found that the petitioner was using Mobile No.9899128447 and he was sending messages to the clients by mentioning the rates of girls. However he evaded his arrest and thus



could not be arrested. The co-accused, who were arrested from the spot were granted the regular bail subsequently.

8. In the facts and circumstances of the case, the Court is convinced that custodial interrogation of the petitioner is essential for unraveling the case. The contentions raised by learned counsel for the petitioner regarding violation of his rights under Article 21 of the Constitution of India is without any force. The rights of the society would prevail over the right of the individual for the free and fair investigation of the case.

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.”*



10. 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.

11. 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.

12. 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 established. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

13. Thus this Court does not find any merit in the present petition and also in the contentions raised by learned counsel for the petitioner.

14. 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