

CRM-M-31264-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

207(2 cases)

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Date of Decision: 11.09.2024

Amit

..... Petitioner

VERSUS

State of Haryana

..... Respondent

2.

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Babli

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON’BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Ashish Pannu, Advocate for the petitioner
in CRM-M-31264-2024.

Mr. Parminder Walia, Advocate for
Mr. Manoj Kumar Sharma, Advocate for the petitioner
in CRM-M-40130-2024.

Mr. Gaurav Bansal, DAG, Haryana.

Mr. Gurdeep Singh Nehra, Advocate for the complainant.

KIRTI SINGH, J.

This common judgment shall decide the aforementioned petitions, as they stem from the same FIR No.252, dated 11.06.2024, under Sections 120B, 34, 406 and 420 of Indian Penal Code, 1860, registered at Police Station Gohana City, District Sonipat.

2. Apprehending their arrest the petitioner(s) filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail in abovesaid FIR.



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FACTS

3. Succinct, factual narrative relevant for the disposal of the case are that the aforesaid FIR was registered on the complaint made by complainant-Smt. Kamlesh stating that Suman wife of Sonu who used to reside near her house, introduced her to Babli (accused/petitioner) who was running a cloth shop and told her that their company was in the business of almond and cashew nuts and their company used to do double the invested money within one year and there are calculations of the transactions of company in every six months. The complainant further stated that on the allurements of said Suman and Babli, on the same day, she handed over Rs.2,45,000/- to Babli and in this regard, she also made entry in her register with regard to said payment. At that time, Babli had disclosed her actual name to be Ankita.

3.1 On 11.02.2023, she further made a payment of Rs.1 lac and thereafter, she kept on making regular payments to said Suman. Believing the assurances of accused persons, she even kept on giving the money of her relatives to them. She received Rs.1.88 crore from her relative namely Sheela, Rs.93 lacs from Babita, Rs.1.20 crore from Angrej Kaur, Rs.60 lacs from her sister Geeta, Rs.60 lacs from Rakesh, Rs.48 lacs from Sheela, Rs.15 lacs from Manju, Rs.15 lacs from Sheena, out of which some amount received by her in her bank account and handed over to accused Suman and Babli. She herself had also given Rs.15 lacs to accused persons.

3.2 She further stated that out of the total amount, Rs.20 lacs were given to accused Babli through account transaction and about Rs.2.50 crores



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were given to accused Suman, out of which Rs.11 lacs were transferred in bank account. She further stated that lastly on 15.11.2023, she had given Rs.6 lacs to accused Suman at her house.

3.3 After expiry of six months, she asked accused Suman and Babli regarding the money, but they avoided the same. Thereafter, on 09.03.2024, accused Babli called her at her shop for payment of money and at that time, complainant, accompanied by Sunita, Manjit, Babita, Akshay and Sheena went to the shop of Babli, where accused Babli along with her daughter was found present. Babli stated that she was having fever and would return back after taking medicine and while returning back, she would bring the money. After about 20 minutes, one car came there, from which 5/6 boys alighted and they proclaimed that they (complainant etc.) have illegally possessed their shop a lesson will be taught to them. After some time, police vehicle also reached there and the police officials stated that they received a complaint regarding illegal possession of shop of Babli by them and the said complaint has been made by brother of Babli. The complainant party disclosed the facts to police officials about the conspiracy hatched by accused Babli and Suman. Thereafter, police officials asked them to visit the police station on the next day. On the next day, police official asked them not to visit the shop or house of accused Babli. On receipt of above information, instant FIR was registered and investigation was set into motion.



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CONTENTIONS

4. Learned counsel for the petitioner(s) submits that petitioner(s) have been falsely implicated in this case and it is highly unbelievable that a transaction had been made by the complainant of such huge amount without any case or agreement and there is also no proof where the complainant had procured said amount of money. It is also stated that due to earlier dispute the complainant had falsely implicated the petitioners.

5. Vide order dated 20.08.2024, notice of motion was issued and the State counsel had been directed to file reply detailing therein the role and criminal antecedents of the petitioners.

6. Status report dated 02.09.2024 by way of affidavit of Assistant Commissioner of Police, Headquarter, Sonipat on behalf of respondent-State has already been filed by the learned State counsel. He further argued that during investigation the relevant Bank account statements of complainant party and accused persons were obtained and statements of the witnesses were recorded and it was found that accused persons had deceived the complainant and other victims of crores of rupees by hatching conspiracy and this amount was received by the accused persons through Bank account or in cash. On 02.07.2024 the complainant produced one pen drive containing audio recording of conversation between accused Babli and Suman and that of accused persons with the victims in which there is admission regarding extracting money from the victims by the accused persons. On 09.07.2024 accused Lalit and Anjali were arrested. On



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they admitted their guilt along with other co-accused. He submits that there is direct and specific allegations and sufficient evidence against the petitioners and have committed the offence and therefore the petitioners are not entitled for the concession of anticipatory bail.

7. This Court has considered the rival submissions made by learned counsel for the parties and perused the relevant record.

ANALYSIS

8. For a proper consideration of the aforesaid contentions and allied questions, it is only appropriate to refer to certain relevant decisions.

9. The Hon’ble Supreme Court in ***“Pratibha Manchanda and another vs. State of Haryana and another, 2023 LiveLaw (SC) 514”*** has held that:-

“16. It goes without saying that the alleged offences of forging documents for transferring ownership of land worth crores of rupees are grave in nature. Hence, while it is extremely important to protect the personal liberty of a person, it is equally incumbent upon us to analyze the seriousness of the offence and determine if there is a need for custodial interrogation.

17. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra***, this Court carefully considered the principles established by the Constitution Bench in ***Gurbaksh Singh Sibbia v. State of Punjab*** case. After a thorough deliberation, this court arrived at the following conclusion:

"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused 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;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people.

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18. In *Sushila Aggarwal v. State (NCT of Delhi)*, the Constitution Bench reaffirmed that when considering applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and



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free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.”

10. In ***Jai Prakash Singh Vs. State of Bihar and another : (2012) 4 SCC 379***, Hon’ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty.

11. In ***P. Chidambaram Vs. Directorate of Enforcement (SC) : 2019(4) R.C.R.(Criminal) 875*** Hon’ble Supreme Court observed as under :

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C., 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the prearrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”



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12. It is thus obvious from the catena of decisions dealing with anticipatory bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438 Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant.

13. From the chronology of events narrated above, it is evident that petitioners along with other co-accused had deceived the complainant and other victims by hatching conspiracy and this amount was received by the accused persons through Bank account or in cash. Accused Lalit, Anjali and Suman suffered their respective disclosure statements regarding commission of offence by hatching conspiracy with the petitioners and other accused persons. During investigation, statements of the witnesses were also recorded and they corroborated the allegations of the complainant and stated to have paid huge amount to accused persons. As per status report the petitioners in connivance with other co-accused succeeded in enticing the complainant and others on false pretexts of business and giving higher rate of interest and petitioner-Babli assured the victims to double their money within one year. The petitioners in connivance with other co-accused used

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to circulate the money to different Bank accounts and misappropriated the same. They distributed the amount with each other and grabbed it.

14. To unearth the true dimension of the alleged offence, the custodial interrogation of the petitioners is required. The investigation is at a preliminary stage and there are possibilities of the petitioners hampering with the investigation. Keeping in view the serious nature and magnitude of the alleged offence which involves transactions of crores of rupees, this Court is of the considered opinion that petitioners are not entitled to the concession of anticipatory bail.

15. Accordingly, the petitions are dismissed.

(KIRTI SINGH)
JUDGE

11.09.2024
Kapil

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No