

2024:PHHC:146316



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CRM-M-33466-2024
DECIDED ON: 16.07.2024

IMRAN KHAN

... PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sunny Singla, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 222, dated 02.12.2023, under Section 420,406 IPC,1860 and section 24 of Immigration Act, 1983 registered at Police Station City-2 Khana, District Ludhiana..

2. Submissions

On behalf of the petitioner:

Learned counsel for the petitioner has submitted that the petitioner has not committed any offence and has been implicated falsely in the present case. And the present FIR is registered after a lapse of 12 months from the date of alleged occurrence.

On behalf of respondent-State and the complainant

On the other hand, learned State Counsel would argue that the allegations against the petitioner is with regard to duping the nephew of the husband of the complainant on account of sending him to Romania on a work permit which the petitioner has failed to do and therefore has cheated him of Rupees 5 lakhs and hence, custodial interrogation of the petitioner would be required to culminate the investigation into a logical end. Accordingly, prayer for dismissal of the present petition has been made.

Heard learned counsel for the respective parties.

4. Analysis and conclusion:

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

Allegations in the present case against the petitioner are prima facie evident wherein he has received a sum of rupees 3 lakhs in his account for sending nephew of the complainant to Romania for work permit and specific role has been attributed to the petitioner in the FIR that due to the assurance given by the petitioner the money was paid to him but neither he has sent the nephew of the complainant abroad nor has returned the money, rather has got issued a fake visa which shows the dishonest intention and inducement from the petitioner side from very inception of the transaction.

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 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.”

It is settled proposition of law that power exercisable under Section 438

Cr.P.C., is somewhat extraordinary in character and it is to be exercised in

exceptional cases. The Supreme Court in “State vs. Anil Sharma”; (1997) 7 SCC 187, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable 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 material 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 needs 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.”

In view of the seriousness of the allegations as also the need to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required. Therefore, I find no merit in the instant petition, hence, the same is hereby dismissed.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the Trial Court is free to adjudicate upon the matter in accordance with law.

16.07.2024
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(SANDEEP MOUDGIL)
JUDGE

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