Neutral Citation No: 2024:PHHC:102630

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101 **CRM-M-38600-2024**
DECIDED ON: 09.08.2024

SHAVI VERMA
… PETITIONER

VERSUS

STATE OF HARYANA
…..RESPONDENT

AND

2. **CRM-M-38764-2024**

SURESH KUMAR YADAV
…..PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER
…..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

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Present: Mr. Abhik Kumar, Advocate for
Mr. Akash Manocha, Advocate
for the petitioner (in CRM-M-38600-2024)
(through VC).

Mr. Rajiv Sharma, Advocate
for the petitioner (in Crm-M-38764-2024).

Mr. B.S. Virk, Sr. DAG, Haryana.

Mr. Mayank Wadhwa, Advocate
for the complainants (through VC).

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SANDEEP MOUDGIL, J

Vide this common order, I shall be disposing off, both the petitions together, as both are arisen out of the same FIR.

1. RELIEF SOUGHT

The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked seeking pre-arrest bail to the petitioners in case FIR No. 218, dated

15.05.2024, under Sections 420, 465, 467, 471 and 120-B of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Palam Vihar, District Gurugram.

2. ***FACTS***

The present FIR stands registered at the instance of Dr. Himanshu Gupta and Dr. Vaibhav Bhola alleging that they were in need of funds to expand their hospital/business operations. In December, 2023, Suresh Yadav (petitioner in CRM-M-38764-2024) approached them with offer to secure low interest foreign loan and introduced them to Shavi Verma (petitioner in CRM-M-38600-2024), who promised to arrange loan. The complainants collected an amount of Rs.35,00,000/-, as asked by the accused, from their friends and relatives and handed over to Suresh Yadav at hospital, for which Suresh Yadav gave them a cheque as a guarantee that they would return the money, if the loan is not sanctioned. Thereafter, the complainants provided all the required documents including company profiles, balance sheets. On 26.02.2024, they were informed that the loan had been sanctioned and were asked to upload documents to an email (bruneswealth@mail.uk). They received loan agreement from Bronc Wealth and SWIFT copy from Deutsche Bank, Germany. However, their bank, IDFC Bank, could not trace the SWIFT code, and no funds appeared in their account. Shavi Verma provided an additional document from Commerzbank (Frankfurt), claiming that 332,205 Euros were being remitted to the complainants' IDFC bank account. Upon further verification, IDFC Bank confirmed that no such payment had been received and that the document appeared to be fabricated. The bank's communication with Commerzbank also indicated that the provided document was false, further confirming the fraudulent nature of Shavi Verma's claims. Shavi Verma and Suresh Yadav failed to appear at a scheduled meeting at Deutsche Bank Noida, despite promising to do so. The complainant doctors realized they were victims of a fraud. Hence, the present FIR.

3. SUBMISSIONS

ON BEHALF OF THE PETITIONERS:

Learned counsel for the petitioner-Shavi Verma (in CRM-M-38600-2024) has submitted that the petitioner has been falsely implicated in the present case, as there is no allegation of receiving money from the complainants by the petitioner. The allegation in the FIR is of giving money to the tune of Rs.35,00,000/- to the co-accused (Suresh Yadav) and to guarantee that money admittedly Suresh Yadav gave a cheque to complainants. The involvement of the petitioner-Shavi Verma is false and assumptive. The petitioner is only accused of being an accomplice of Suresh Yadav. No concrete evidence is available on record to connect the petitioner in commissioning of offence, as there is no agreement, receipt or written proof of payment. The present case is wholly based upon complainants' verbal allegation. There is also delay in lodging the FIR and the complainants have failed to give any explanation for the delay in reporting the matter to the police.

Learned counsel for the petitioner-Suresh Yadav (in CRM-M-38764-2024) has submitted that the petitioner has not committed any offence, as alleged in the FIR and he has been implicated in false case of cheating and forgery to extort money of Rs.35,00,000/- whereas, the fact is that no monetary transaction took place in the presence of the petitioner. The petitioner was merely a witness to communications between the complainants, Shavi Verma and Ravindra and has been shown as an intermediary for one loan transaction from some foreign lender.

ON BEHALF OF RESPONDENT-STATE AND COMPLAINANTS

Learned State counsel assisted by learned counsel for the complainants have submitted that a specific allegation has been levelled against the petitioners that they defrauded the complainants of Rs.35,00,000/- by promising a low interest loan from foreign entities.

Heard learned counsel for the parties at length.

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.

As per the prosecution story, the petitioners defrauded the complainants of Rs.35,00,000/-. The petitioners have played an active role in providing fraudulent SWIFT copy from Deutsche Bank and the fake Commerzbank document to the doctors/complainants. There is documentary evidence against both the petitioners, which stands substantiated from the photocopies of the cheque, a letter and other loan documents, which have been collected by the Investigating agency. In order to know about the exact role of the petitioners and to uncover the source of the alleged forged SWIFT copy from Deutsche Bank and the document of Commerzbank, the custodial interrogation of the petitioners would certainly be required.

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***.*"*

More so, investigation is still going on in the present case. 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 both the petitions i.e. CRM-M-38600-2024 and CRM-M-38764-2024 and the same are 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.

(SANDEEP MOUDGIL)
JUDGE

09.08.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No