

CRM-M-44850-2023

2024:PHHC:029226
-1-

(213) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-44850-2023
Date of decision :29.02.2024

YADWINDER SINGH CHEEMA

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Varun Goyal, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.358 dated 27.06.2023 registered under Section 135 of Electricity Act, 2003 at Police Station Anti Power Theft, District Jalandhar.

2. The present FIR came to be registered at the instance of the officials of the Electricity Department and the same reads as under:-

“12.First Information Contents (Attach Separate sheet, if necessary). PSPCL from Assistant Executive Engineer/Distribution C/3 Commercial-5, Baring Jalandhar to SHO, PS Anti Power Theft, Jalandhar. Letter no 1433 Dt. 27/06/2023 for registration of FIR for offence of Power theft. Regarding above subject you are being informed that on 26.06.2023, staff of the PSPCL comprising of Sukhpal Singh, Assistant Executive Engineer, Enforcement-cum-EA alongwith Rahul Kapur, Senior Executive Engineer, enforcement cum EA, Kuldip Assistant Executive Engineer Rural-2, Jalandhar conducted checking of electric connection registered in the name of Yadwinder Singh Cheema S/O Surjit Singh, R/o Dhina to Jamsher road, Jalandhar at

Restaurant situated at Dhina to Jamsher road, Jalandhar. However, it was found that the petitioner was directly consuming electricity/power by tapping power lines. The consumer was alleged to have committed theft of electricity. Checking memo was prepared and ECR 49/353 Dt. 26/06/2023 was prepared on spot by taking the wire used for tapping the power lines into possession and notice vide letter no 1432 dated 27.06.2023 was issued to Yadwinder Singh S/O Surjit Singh R/o Dhina to Jamsher Road, Jalandhar calling upon him to deposit a sum of Rs. 29,75,321 as compensation/electricity pilferage amount besides compounding fee of Rs. 2,01,515 and the FIR for the offence of Power theft may kindly be registered against the petitioner and copy of the same may be sent to this office. On receiving the letter no 1433 dt. 27.06.2023 an offence of power theft was found to be committed U/s 135 Electricity Act, 2003. The copy of it is being forwarded to senior officials for further action and proceedings.”

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. In fact, he had initially been granted the concession of interim bail by the Sessions Court on an assurance that he would make the requisite payment. However, on account of shortage of time, he was unable to arrange the amount to be paid and thus, his bail application came to be dismissed. He states that as the petitioner was ready and willing to join investigation, he was entitled to the concession of anticipatory bail.

4. On the other hand, the learned State counsel contends that the petitioner had been granted the concession of interim bail by the Sessions Court and was directed to join investigation as also to deposit

1/3rd of the penalty amount as well as 1/3rd of the compounding fee. However, the petitioner had failed to join investigation and deposit the requisite amount. Resultantly, his first bail application was dismissed. Thereafter, he filed the second bail application which met the similar fate. Even before this Court, initially, he had stated that he was ready and willing to settle the entire dispute with PSPCL. While some payment was made, he had sought time to make the remaining payment because of which on 14.09.2023 his arrest had been stayed. However, later, the counsel was changed and the undertaking given in the order dated 14.09.2023 of making the entire was sought to be withdrawn. Therefore, the interim order staying his arrest was vacated and the matter has come up for hearing. It is her contention that despite availing multiple opportunities, the petitioner had not made the requisite payment and as the offence was *prima facie* established, no case for the grant of anticipatory bail was made out.

5. I have heard the learned counsel for the parties.

6. 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.

7. A perusal of the record would show that the petitioner has availed multiple opportunities to make the payment for having committed the offence of theft of electricity. Undertakings were given before the Sessions Court and this Court and each time, the petitioner has reneged from his undertaking. Further, the offence stands *prima facie* established and therefore, as the investigation is to be taken to its logical conclusion, the custodial interrogation of the petitioner is certainly necessary.

8. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

9. However, the observations made hereinabove are only for the purposes of deciding this bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

29.02.2024
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No