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

**CRM-M No.46283 of 2024
Date of Decision: 17.09.2024**

Kulbir Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Abhinav Aggarwal, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for the grant of anticipatory bail to the petitioner in case FIR No.0683, dated 07.12.2023, under Sections 120-B, 406, 420, 467, 468 & 471 of IPC, 1860, registered at Police Station City Tohana, District Fatehabad (Annexure P-3). Further prayer has been made for staying the arrest of the petitioner during the pendency of the present petition.

2. Succinctly the facts of the case are that the complainant, namely, Ajay Singh Nain lodged a complaint with the police against the petitioner and the co-accused wherein it was alleged that Kulbir Singh son of Mange Ram used to visit their house and told the



complainant that he works for immigration along with Amit Sharma and Harjit Kaur and has set up his office in Ghaziabad. He lured the complainant that he can get the permanent visa for Australia for the complainant where he would get the package of crores. He was asked to pay an amount of Rs.40-45 lacs. Believing the same to be true, the complainant deposited an amount of Rs.18,00,000/- in the account of Kulbir Singh as per the instructions. He also submitted relevant documents with them. Six months had passed but no action had been taken by the accused-petitioner. He inquired and found from the Australian Embassy that no file regarding his visa has been filed by the petitioner, namely, Kulbir Singh. The petitioner was asked to return the money, however neither he returned the documents nor the amount. It was alleged that the petitioner conspired with the other co-accused and thus grabbed Rs.43,00,000/- from the complainant. The request was made to take the legal action against the accused for cheating them for an amount to the tune of Rs.43,00,000/-. On the basis of the complaint filed, the FIR was registered and investigation commenced. Apprehending his arrest, the petitioner approached the Court of learned Additional Sessions Judge, Fatehabad praying for the grant of anticipatory bail. However on hearing both the sides, the learned Additional Sessions Judge, Fatehabad finding no merit in the same, dismissed the same vide his order dated 12.08.2024. Hence being aggrieved the petitioner is before this Court by way of filing the present petition for the grant of pre-arrest bail.



3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. He has submitted that the main accused, namely, Amit Sharma through his affidavit dated 06.06.2023 had admitted that he had taken Rs.43,00,000/- from the complainant. Co-accused, namely, Amit Sharma had issued a cheque of Rs.23,00,000/- to the complainant which on presentation was returned with the remark “funds insufficient”. He has thus submitted that it is evident that the dispute of Rs.43,00,000/- is between the main accused, namely, Amit Sharma and the complainant and the same is of the civil nature. He has submitted that registration of the FIR in a case of civil nature is totally an abuse of the process of the Court. He has submitted that from the facts and circumstances, it is apparent that the petitioner had no complicity in the present case and thus, there being no prima facie case, he deserves to be granted anticipatory bail.

4. Heard.

5. On hearing learned counsel for the petitioner and perusing the record, it is apparent that the FIR had been lodged on the complaint filed by the complainant wherein the specific allegations have been made by the complainant. It has been specifically alleged that the complainant transferred an amount of Rs.18,00,000/- in the account of petitioner. Thus the transaction of the amount from the complainant being in the account of the petitioner prima facie shows the complicity of the petitioner as alleged by the complainant. The total amount



involved in the case is Rs.43,00,000/-. The case of the co-accused, who has been granted anticipatory bail by this Court is not at par with the case of petitioner.

6. For the consideration of anticipatory bail, the statutory parameters are given under Section 482(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 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 an 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; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*
- (2) When the High Court or the Court of Sessions makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-*
 - (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*
 - (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*
 - (iii) a condition that the person shall not leave India without the previous permission of the Court;*



(iv) such other condition as may be imposed under sub-section (3) of Section 480, as if the bail were granted under that Section.

7. 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.

8. 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.

9. 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 found. The investigation is at its threshold. The allegations made during the investigation are found to be serious. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

10. 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. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

17.09.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No