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(101)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47814-2024

Date of Decision: 27.09.2024

AVINASH KUMAR SINGH

... Petitioner

Versus

STATE OF PUNJAB & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.S. Brar, Advocate
for the petitioner.Mr. Rohit Bansal, Sr. Dag, Punjab
for respondent No.1.

None for respondent No.2.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 483(5) BNSS, 2023 is for setting aside/cancellation of the order dated 25.04.2024 (Annexure P-7) vide which the anticipatory bail has been granted in FIR No.72 dated 04.09.2023 (Annexure P-1) registered under Sections 408, 420, 465, 467, 468, 471 and 120-B IPC at Police Station Kathagarh District SBS Nagar.

2. The brief facts of the case are that the FIR in question came to be registered at the instance of the petitioner/complainant-Avainsh Kumar Singh with the allegations that he was running a factory for the manufacture of plywood etc. His employees including the respondent No.2 had embezzled crores of rupees.



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3. The accused/respondent No.2 sought the concession of anticipatory bail and was granted the same by this Court vide order dated 12.03.2024 (Annexure P-5) which order is under challenge in the present petition.

4. The learned counsel for the petitioner contends that when the bail application of the accused/respondent No.2 had been filed, the State had filed a reply dated 21.02.2024 (Annexure P-4) as per which the custodial interrogation of the accused/respondent No.2 was required to recover money. Therefore, the bail granted to him was liable to be cancelled as no such recovery had been effected.

5. I have heard the learned counsel for the petitioner/complainant.

6. Against the order granting bail to the accused/respondent No.2 dated 12.03.2024 (Annexure P-5), the petitioner/complainant approached the Hon'ble Supreme Court seeking cancellation of the bail and the same was declined vide order dated 14.08.2024 (Annexure P-8) with liberty to pursue his remedies in accordance with law. In furtherance thereof, the instant petition has been filed.

7. It is settled law that anticipatory bail cannot be declined only on account of recovery of money having to be effected. It has been so held in the case of **Bimla Tiwari Versus State of Bihar & others, 2023(1) RCR (Criminal) 773**, the relevant paras of which are as under:-

“9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.



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11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings.

(emphasis supplied)

8. Further, the principles governing grant of bail and cancellation of bail are completely different. Bail once granted can be cancelled only where either the conditions of the order granting bail have been violated or in a case where bail was granted on misreading of the material on record. It has been so held in Himanshu Sharma Versus State of Madhya Pradesh, 2024(2) RCR (Criminal) 68, para 12 of which is as under:-

12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud. In the present case, none of these situations existed.

(emphasis supplied)

9. In the instant case, neither are there any supervening circumstances under which bail granted ought to be cancelled and nor has the petitioner/complainant pointed out any such fact which had not been properly considered by this Court while granting the concession of anticipatory bail. In fact, it has candidly admitted that other than recovery of money as has

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been mentioned in the State reply dated 21.02.2024 (Annexure P-4) there is no other ground for which cancellation of bail has been sought.

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

(JASJIT SINGH BEDI)
JUDGE

27.09.2024

JITESH

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