209 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.52062 of 2023 (O&M)
Reserved on 09.01.2024
Pronounced on 19.04.2024

Gopi Chand

.... Petitioner

V/s.

State of Haryana

........Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G.S Madaan, Advocate and
Mr. Anshul Sharma, Advocate
for the petitioner.

Mr. Vikrant Pamboo, Sr. D.A.G., Haryana

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Anoop Chitkara, J.

FIR No.	Dated	Police Station	Sections
113	04.03.2019	City Fatehabad, District Fatehabad	420, 466, 467, 468, 471 IPC read with 120-B IPC and Sections 13(1)(d), 13(2) and 9 of the Prevention of Corruption Act, 1988

The petitioner who was posted as Branch Manager in the Central Cooperative Bank, Ratia, Fatehabad, apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. Vide order dated 13.10.2023, this Court has granted interim bail to the petitioner, subject to compliance of conditions which is continuing till date.

3. The facts of the case have been taken from the reply dated 08.11.2023 which read as follows:

> *"2. That the brief facts of the case are that on basis of complaint moved by complainant Ramesh Kumar Poonia, Manager, Central Co-operative Bank, Opposite M.M. College, Fatehabad, District Fatehabad, alleging therein that an enquiry regarding committing irregularities in distribution of loan amounts during the period from 01.01.2016 to 31.03.2018 was conducted by enquiry team constituted by HARCO Bank and vide letter bearing Endstt. No. EA- 1/2018-19/351-9851 dated 24/25.01.2019, issued by the Haryana State Cooperative Apex Bank Limited (HARCO Bank), sanction was accorded to lodge FIR against all the persons who were found guilty in the said report.*
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> *It is further alleged that as per said enquiry report, total 1144 loans of Rs. 74,92,09,785/- were distributed during aforesaid period, out of which 802 loan case files were enquired by the inquiry team, in which a sum of Rs. 65,40,24,000/- were found distributed. Further, as per enquiry report,*

loan application were found recommended by the Managers and Development Officers of the Banks, without complete documents, and thereafter the same were found to be got sanctioned from General Manager, in violation of rules and regulations and in the same way, Gopi Chand, (Petitioner) the then Branch Manager, Central Cooperative Bank Limited, Ratia, Fatehabad recommended applications of loanee before Narsi Ram, the then General Manager and got sanction loans, without prior appraisal of Loan Appraisal Committee and records of the same were not maintained at Headquarter level.

During said enquiry, it was also found that recommendation letters were issued by way of fake dispatch numbers and amounts were also found got transferred in the bank accounts of loanees and loans were found distributed to the persons, who were beyond the jurisdiction of Banks, on the basis of fake KYC ("know your customer", which refers to the process of identify and addresses verification of all customers and clients by banks), in violation of Bye-laws and rules of the Bank, which itself shows that corrupt practices were adopted in distribution of loans.

It is further alleged that loans were found distributed by the Managers of different Banks, after taking sanction from Headquarter, in violation of terms and condition. It is also found during the said enquiry that non agriculture loans were distributed by showing agriculture purpose by making mortgage deeds and loans were also found distributed on basis of suspicious bill by showing them genuine as such matter regarding tax evasion was also reported by the District Taxation Officer, Fatehabad vide its letter bearing Endstt. No. 736-737 dated 24.08.2018.

It is further alleged that in most of the cases, loans amounts were found to be misused by the loanees, in connivance with Branch Manager and officials/officers of the banks, in collusion with each other, have distributed loan to cheat the banks. So, it is requested that action be taken against the persons, who were found guilty in the enquiry report, including Bank Managers, Development Officers, the then Loan Section Incharge & General Managers, outsiders (who appeared on behalf of Banks, in Tehsil, at the time of execution of mortgage-deeds), laonees (who misused loan amounts) and other persons in whose accounts amounts were transferred from loan amounts, illegally. Hence, a case FIR No. 113 dated 04.03.2019 u/s 420, 466, 467, 468, 471 & 120-B IPC and 9, 13(1)(d) r/w 13(2) PC Act PS, City Fatehabad has been registered against the petitioner and other co-accused persons.

3. That it is also pertinent to mention here that the State Govt. transferred the above said case FIR to State Vigilance Bureau, Haryana, Panchkula (now Anti Corruption Bureau, Haryana Panchkula) vide memo No. 65/08/2018-5 Vigi.(I) dated 30.10.2019 and the same received in the office of Superintendent of Police, State Vigilance Bureau, Hisar Range Hisar vide Endstt. no. 17900/1-3/SVB(H) dated 11-11-2019 as such now the investigation of the above said case is being conducted by Anti Corruption Bureau (ACB). Hisar Range, Hisar.

> *4. That during the course of investigation it is found that the petitioner was posted as Branch Manager, The Fatehabad Central Co-operative Bank, Ratia, Fatehabad recommended applications of loanee for sanction of loan before Sh. Narsi Ram, the then General Manager, Central Co-operative Bank, Fatehabad and got sanction the same without prior appraisal of Loan Appraisal Committee. Furthermore, records of those loans were not maintained by him at the Headquarter being Branch Manager, The Fatehabad Central Co-operative Bank, Ratia, Fatehabad as such the petitioner and other co-accused intentionally disobeyed the rule regulation and guidelines regarding sanction of loan of the loanees and thereby illegally and fraudulently obtained bribe of Rs. 50,00,000/- from the loanees in collusion with co- accused Gagandeep Grover s/o Sh. Kirshan Kumar R/o Ratia and Narsi Ram. The translated copies of statement of loanees u/s 161 Crpc are annexed as Annexures **R-1 to R- 8**."*

4. The petitioner seeks bail on the ground that he was neither a sanctioning authority nor forwarding authority.

5. The State submits that the petitioner is not entitled to bail because his case is at par with the co-accused namely Mohinder Singh Bhadu and Jagdish Prashad whose bail have been dismissed by this Court in CRM-M-11912 of 2023 and CRM-M-12359 of 2023.

6. This Court has dismissed the bail petition of co-accused Mohinder Singh Bhadu and Jagdish Prashad who had allegations of receipt of bribe of Rs.42,00,000/- and Rs.55,00,000/-, respectively. While dismissing the bail petition, this Court had given the following reasoning which reads as under:

> *"7. The allegations against the petitioners are that they took illegally benefits by distributing the people money to those people who were not entitled to receive the agricultural loans. By this way, they not only helped some of those people to convert their illegal and black money into white but also deprived the genuine farmers from getting such loans. The stand of the petitioners are that no loss has been caused and colaterals were taken is meaningless. The loans were to be distributed only for agricultural purposes and within the jurisdiction. However, the evidence points out towards that the petitioners intentionally gave it to non-deserving people because in return they received money. Another argument that 80% of the loan has been repaid is inconsequential. This Court is not concerned with recovery of loan but with the malicious intent with which with the petitioners were working. The petitioner-Mahender Singh Bhadu was posted as Manager in Central Co-operative Bank as well as Loan Sanction Officer. Similarly, petitioner- Jagdish Parshad was also posted as Manager and both of them wrongly recommended the loans to those people who were not deserving and also beyond their jurisdiction. The custodial interrogation of the petitioners would be required to know the involvement of other officials to unearth the scam."*

7. I have heard counsel for the parties and have gone through the pleadings, and its analysis will lead to the following outcome:

8. In paragraph 4 of the reply filed by the concerned DySP, it has been mentioned that the petitioner Gopi Chand was posted as Branch Manager and he had recommended applications for sanction of loan before Narsi Ram, the then General Manager, Central Cooperative Bank and got sanction loan without appraisal of Loan Appraisal Committee. In addition to that, he did not maintain the record at Fatehabad and intentionally disobeyed the rules and regulations. The petitioner was posted as the Branch Manager, and the co-accused, whose bails were dismissed, namely Mahender Singh Bhadu was posted as Manager as well as Loan Sanction Officer. All these had similar roles, i.e., identification of right persons, and verifying that loans were properly utilized.

9. State has referred to statements of persons who substantiate their allegations. Statement of Pargat Singh is annexed at R-1 wherein he has stated that he in 2016, alongwith his brother had purchased land in a village and for this, they wanted loan for domestic need. For this, they had met one Gagandeep who had told them that he will get their loan sanctioned from Cooperative Bank and for that they will have to spend money. On enquiry, the said Advocate Gagandeep told them that he will have to pay money up to the top level and he will get their loan sanctioned. After that, they agreed to pay and Gagandeep told them that he has got a loan of Rs.9.50 lacs sanctioned in their favour and for this he had to put his signatures on empty withdrawal forms in the office of the Branch Manager, Gopi Chand, the petitioner. Through these signed empty forms and one cheque of Rs.70,000/- was signed by Gagandeep and Rs. 25,000- in cash and in all he grabbed Rs.3,50,000/-. There are similar statements of Parmal Singh, Gurmail Singh, Gurlal Singh, Jaspal Singh, Darshan Singh, Gurdeep Singh and Lakhvinder Singh. An analysis of the submissions and these statements point out towards the petitioner's involvement. Thus, the Investigator has collected sufficient primafacie evidence against the petitioner. In para 6 of the reply filed by the DySP, it has been mentioned that the petitioner had received a bribe of Rs. 50,00,000/- from the loanees.

10. Given the nature of allegations, custodial interrogation is required. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

11. In Sumitha Pradeep v Arun Kumar CK, 2022 SCC OnLine SC 1529, Supreme Court holds,

> [16]. … 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 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 anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

12. In State of Gujarat v. Mohanlal Jitamalji Porwal (1987) 2 SCC 364, Supreme Court holds,

> [5]. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

13. In State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187, Supreme Court holds,

> [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 ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he 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 task of disinterring offences would not conduct themselves as offenders.

14. In Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, Supreme Court holds,

> [19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

15. In Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, Supreme Court holds,

> [34]. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

> [35]. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

16. In <u>P. Chidambaram v. Directorate of Enforcement</u>, 2019 9 SCC 24, Supreme Court holds,

> [70]. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C., 1973 is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

17. In <u>Central Bureau of Investigation v. Santosh Karnani</u>, Cr.A 1148 of 2023, dated 17-04-2023, Supreme Court, in an FIR registered under sections under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988, holds,

> [24]. The time−tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.
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> [31]. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious.

18. In the background of the allegations and in the light of the judicial precedents mentioned above, also in the facts and circumstances peculiar to this case, the petitioner fails to make a case for anticipatory bail.

19. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed. Interim orders, if any, stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

19.01. 2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: No