

2024:PHHC:167733



122

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55836-2024
DECIDED ON: 08.11.2024

GURMANGAT SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lakhvinder Singh, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 438 Cr.P.C., has been invoked seeking anticipatory bail to the present petitioner in FIR No. 69 dated 26.05.2021 under Sections 420, 465, 467, 468, 471, 120-B of IPC, 1860 registered at P.S. Bhikhi, District Mansa.

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

‘Copy of complaint "complaint no. 302-3-1791/PM, Dated : 23.12.2020, To, SSP Mansa, Subject : For taking action against persons who mislead persons to get enrolled in army. Complaint for cheating and fraud against Shah Baj Singh S/ Jasmeet Singh, Jasmeet Singh S/o Jangir Singh, Jaswinder Kaur W/o Jasmeet Singh for taking

Rs.9 Lacs by defrauding under pretence of enrolling in Army. Sir, it is requested that | Kuldeep Sharma is B.A. pass and my brother Ravi Sharma S/o Lachman Ram, Village Bhikhi is 10+2 Pass and we do work of agriculture. That my sons are aged 21 years and 25 years and we were having interest to get ourselves enrolled in Army due to which whenever there were recruitments for Army we both brothers always tried to get ourselves appointed in Army. That I had talked this matter with Shah Baj Singh S/o Jasmeet Singh S/o Jangir Singh who is 10+2 pass and is resident of Village Bhikhi and he had told me that his father Jagmeet Singh (Kaka) is getting persons appointed in Army. That he had taken us to his father two months earlier and said that he will get us appointed and he had demanded money from us and I took Panchayat member to their house and talked the matter regarding our appointment in Army and he immediately said to me that he is having relations with Senior Army Officers and he can get me enrolled by talking with them on condition of payment of money on which I said to him that he shall get us appointed and we are poor persons and he will give him money by taking the same from Artiya. He called us to his house and I alongwith Jaspal Singh S/o Gurdev Singh and Mithu Singh S/o Nek Singh, R/o Bhikhi went to his house and he had demanded Rs.9,10,000/- and he said to us that our work will be done subject payment of Rs.9,10,000/-. That I had given him Rs.9,10,000/- and he had accepted the money and handed it over to his wife Jaswinder Kaur W/o Jasmeet Singh and copy of CD is attached. That on 10.09.2019 we had taken Rs.3 Lacs from Artiya and taken Rs.3 Lacs from our house and Rs.3 Lac were taken from relatives and he had also given us joining letters on 12 Feb and 14 January and had sent Ravi and Kuldeep Singh to Ranchi Range where officer of Army had told us that this letter is forged and when we returned to our village and asked him about this and told him to return our money than he used to give evasive replies and I recorded his conversations and he threatened us when we demanded our money. Recording of threats is in CD and copies of forged letters are also attached and it is requested that action be taken against Shah Baj Singh S/o Jasmeet

Singh S/o Jangir Singh, Wife Jaswinder Kaur for committing fraud with us under pretence of getting us enrolled in Army and for preparing forged documents. Your's Sincerely, Thanking You, LTI Lachman Ram S/o Purshotam Ram, R/o Village Bhikhi, Complaint No. above was marked by SSP Mansa to DSP HQ for investigation who had given his enquiry report- during enquiry from watching above complaint it is found that complainant leveled allegations in his compliant that complainant Lachman Ram had talked the matter regarding unemployment of his two sons Kuldeep Sharma, Ravi Sharma with Shah Baj Singh S/o Jasmeet Singh, who had said that his father Jsmeet Singh is having regulations with higher officers of the Army and he can get his sons appointed in Army as TA. After that on asking of Shah Baj Singh he went to house of Jasmeet Singh where Jasmeet Singh and Shah Baj Singh told him that work can be done for Rs.9,10,000/- and they settled on this amount. That on 22.09.2019 he got the money withdrawn from his account and he alongwith Jaspal Singh /o Gurdev Singh, R/p Bhikhi went to house of Jasmeet Singh and handed over the cash to Jasmeet Singh and Jasmeet Singh had assured complainant that work will be done at the earliest and after some days he had given one slip to them by saying that same is roll no. and on the slip words AB/HAN/D/280419/1061 were written and he had stated that roll numbers of his sons had came and he should handover the balance amount on which complainant arranged the balance amouht and handed over the same to house of Jasmeet Singh on 29.09.2019 after which Jasmeet Singh had given two letters to him by saying that same are joining letters and complainant came to know after words that the same are forged. That Jasmeet Singh etc. had committed fraud of Rs.9,10,000/- with him under pretence of getting his sons enrolled in Army. That during enquiry complainant Lachman Ram was joined and his statement was recorded who had written in his statement that for getting his sons appointed as TA in Army Shah Baj Singh S/o Jasmeet Singh and Jasmeet Singh had committed fraud of Rs. 9,10,000/- with them and he had taken Rs.4 Lacs from his Artiya by getting it deposited in his account from Artiya and after that

he had withdrawn the same for giving it to Jasmeet Singh and he alongwith Jaspal Singh S/o Gurdev Singh, R/o Village Bhikhi went to house of Jasmeet Singh and handed over the money to him and money was taken by Jaswinder Kaur W/o Jasmeet Singh and after 5 days Jasmeet Singh had got pasted one slip on Matric Certificates of his sons by saying that same is Roll No. and demanded more money on which he had taken Rs.2 Lacs from his brother-in-law Shinderpal Singh R/o Kanakwal, and taken Rs.1 Lac from Mitthu Singh, R/o Bhikhi loan and got Rs.70,000/- by selling his buffalo and arranged some more money and handed over the same to Jasmeet Singh at his house on 29.09.2019 after which Jasmeet Singh had given Rs.2 Lacs to his sons by saying that same are joining letters and same were found to be forged after words. So Jasmeet Singh had not got his sons appointed and had not returned their money. That Jasmeet Singh was also joined in investigation and statement was recorded and he stated that he came to known with Gurmangat-Singh S/o Dalbir Singh, R/o Jalopur, Tehsil Ratiya, District Fatehabad, who has stated that he is doing work of persons enroll in Army on which he has finalized talks with him for Rs.3,50,000/- for getting his nephew enrolled and Lachman Ram Pandit came to know about this fact on which Lachman Ram had initiated talks with Gurmangat Singh for getting both his sons enrolled and he had stated that he will get sons of Lachman Ram enrolled in Army and matter was finalized that both his sons will be appointed subject to payment of Rs, 7 Lacs in two installments and as per saying of Gurmangat Singh he had taken Rs. 1,50,000/- from Lachman Ram and Gurmangat Singh came next date and taken this amount after which Lachman Ram started to have talks on phone directly with Gurmangat Singh. That after this he came to know that he had given the balance Rs.5,50,000/- to Gurmangat Singh and after that he had taken his nephew and sons of Lachman Ram firstly to Patiala and after that to Ranchi where he had also given forged joining letter and calling letter and after that due to Corona recruitments were canceled and started to demand money from Gurmangat Singh and Gurmangat Singh started to give evasive

reply on demand of money and now he is not found at his house. That he only get Lachman Ram introduced with Gurmangat Singh on persistent demand of Lachman Ram and he had handed over the money to Gurmangat Singh which was taken from Lachman Ram. That during investigation from complaint and statements, joining letter and calling letter it was found that opposite party Jasmeet Singh had demanded Rs.9,10,000/- from complainant Lachman Ram for getting his sons appointed in Army as TA and on 21.09.2019 complainant Lachman Ram had got Rs.4 Lacs transferred in his account from his Artiya and on the next day on 22.09.2019 he alongwith Jaspal Singh S/o Gurdev Singh, R/o Bhikhi went to Jasmeet Singh and handed over the money and after that complainant had taken Rs.2 Lacs from his brother-in-law Shinder Pal @ Sukhwinder Sing, R/o Panditwal and had taken Rs.1 Lac from Mitthu Singh S/o Nek Singh, R/o Bhikhi and on 29.09.2019 he alongwith Jaspal Singh S/o Gurdev Singh, R/o Bhikhi had handed over Rs.3,10,000/- to Jasmeet Singh at his house. That Shinder Pal @ Sukhwinder Singh and Mitthu Ram recorded their statement and verified the fact regarding money given by them to Lachman Ram. Besides this Jaspal Singh recorded in his statement that Lachman Ram had given Rs.7,10,000/- to Jasmeet Singh in front of his eyes. Besides this Jasmeet Singh to assure the complainant had handed over letters to complainant by depicting the same as joining letter and calling letter and Jasmeet Singh had stated that matter regarding the money which was handed over and the roll no./ joining letter is concerned with Gurmangat Singh S/ Dalbir Singh, R/o Jalopur. During investigation it is found that Shah Baj Singh S/o Jasmeet Singh and Jaswinder Kaur W/o Jasmeet Singh are not involved in this case. So, Jasmeet Singh S/o Jangir Singh, R/o Ward No. 16, Bhikhi and Gurmangat Singh S/o Dalbir Singh , R/o Jalopur, Tehsil Ratiya, District Fatehabad in connivance with each other had taken Rs.7,10,000/- from Lachman Ram under pretence of getting his sons enrolled as TA in the Army and had given them forged joining letter and calling letters and committed fraud with them and offence U/s 420,120-B,

465,467,468,471 IPC is made out. If approved them SHO Bhikhi be directed to register case against Jasmeet Singh S/o Jangir Singh, R/o Ward No. 16, Bhikhi and Gurmangat Singh S/o Dalbir Singh, R/o Jalopur, Tehsil Ratiya, District Fatehabad, U/s 420, 120-B, 465,467,468,471 IPC and investigation be started.

3. **Contentions**

On behalf of the petitioner

The learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case based on the FIR lodged by the complainant, Lachhman Ram. According to the complainant, a deal was allegedly struck for Rs. 9,00,000/- on the pretext of securing employment for his two sons in the Indian Army. The complainant claims that Rs. 7,10,000/- was allegedly paid to Jasmeet Singh in cash on two separate occasions Rs. 4,00,000/- initially and Rs. 3,10,000/- thereafter. The counsel has pointed out that, as per the inquiry conducted, the name of the petitioner surfaced in the statement of the accused, Jasmeet Singh. However, neither the FIR nor the statement of the complainant contains any specific allegations against the petitioner. He submits that the petitioner is ready and willing to join the investigation.

On behalf of the respondent/State

The learned State counsel, appearing on advance notice, seeks the dismissal of the present petition, arguing that although the complainant came into contact with Jasmeet Singh, it was Jasmeet Singh who communicated with the petitioner. He further submits that during the inquiry, the statement of Jasmeet Singh was recorded, in which he stated that he knew the petitioner and that it was the petitioner who was handling the matter related to employment in the Indian Army. Therefore, the allegations against the petitioner are of serious nature, and his custodial interrogation is necessary at this stage.

4. Analysis

It is pertinent to note that the FIR was registered by the complainant, Lachhman Ram, alleging that a deal for Rs. 9,00,000/- was struck under the pretext of securing employment for his two sons in the Indian Army. According to the complainant, a total of Rs. 7,10,000/- was alleged to be paid to the petitioner. Out of the said total amount initially an amount of Rs.1,50,000/- was paid to the petitioner. Thereafter, the balance amount to the tune of Rs.5,50,000/- was also paid to the petitioner. After giving the total consideration, the petitioner took the nephew and sons of the complainant to Patiala and from Patiala to Ranchi, where he had given them a forged joining letter and calling letter, which is sufficient for this Court to infer that the petitioner has defrauded the complainant on the pretext of giving job to his nephew and sons in Army as TA. Hence, *prima-facie* offence under Section 420 IPC is made out against the petitioner. Such an allegation certainly requires adequate and intense investigation to unearth the truth. The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant anticipatory. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand at this stage.

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.”

Keeping in view the role attributed to the petitioner, this Court is of the view that their custodial interrogation is required to collect the material evidence, which may further enable the Investigating Agency to unearth the ramifications involved in the present case and that will ultimately help the Investigating Agency to reach to a logical conclusion, this Court does not find any merit in the present petition, hence the same stands dismissed with no order as to costs.

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

08.11.2024

Sham	
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No