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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-62297-2023 (O & M)
Date of decision:22.02.2024

Kawarbir Singh Petitioner
V/s

State of Punjab and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vikas Gupta, Advocate,
for the petitioner.

Mr. Mohit Saroha, AAG, Punjab.

Mr. Amit Arora, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.251 dated 09.06.2023 under Sections 420, 370 and 120-B IPC registered at Police Station Goindwal Sahib, District Tarn Taran.

2. The present FIR came to be registered at the instance of Dilraj Singh son of S. Kanwaljeet Singh and reads as under:-

“To, Hon'ble SSP, Tarn Taran. Subject:- Complaint for committing fraud of Rs. 38,50,000/- pertaining to send abroad against 1) Harbhinder Singh S/o Chanchal Singh, 2) Kawarbir Singh 3) Shamsher Singh Shera sons of Harbhinder Singh 4) Baljit Kaur W/o Harbhinder Singh residents of Village Luhar, P.S. Goindwal Sahib, District Tarn Taran. 5) Navreet Kaur D/o Harbhinder Singh, wife of not known resident of Village Luhar, Police Station Goindwal Sahib, District Tarn Taran, 6. Sumanpreet Kaur D/o Harbhinder Singh, wife of not unknown at present resident of Canada Respected Sir, It is requested that

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I, Dilraj Singh S/o Kanwaljit Singh resident of Village Dehra Sahib, Tehsil Khadur Sahib, District Tarn Taran, and request that all the abovesaid are members of one family, out of which accused No. 6, namely, Sumanpreet Kaur is living abroad in Canada, and committed fraud with common people for sending them abroad in connivance with the other accused. Accused No.1, namely, Harbhinder Singh came to our house and told my father that his son is free here, he will send his son abroad (America) and he will start working there. That on 04.10.2022, I also sent my original passport, PAN card, original Aadhaar card, one passport size photograph, which I sent from my mobile in PDF form to all the said accused and My father and I gave Rs. 7,00,000/- in cash at his house in the presence of my uncle's son, namely, Gurwinder Singh. At that time, they also consulted accused No. 6 over the phone and they got me a VISA to Indonesia and on 06.10.2022, they booked my flight from Delhi. When I reached Indonesia, the said accused No. 2 namely Kawarbir Singh and his accomplices were present there, who kidnapped me. When I reached there, I had dollars for Rs. 1,50,000/- (Indian Currency), which they snatched from me and gave severe beatings to me and made me call at my home with a pistol pointed at my ear that I had arrived safely abroad (America), and thereafter all the abovesaid persons, called my father at their house and took Rs. 30,00,000/- from my father. At that time, my uncle's son, namely, Gurwinder Singh and my uncle, namely, Avtar Singh were present with my father. They kept beating me for 15 days and starved even from food. That when I did not make a phone call, thereafter, my family reached their house, enquired and pressurized that there is no trace of our son, if there is any loss of life of our son then it will be your responsibility. Therefore, on 23.10.2022, they arranged my flight from Indonesia to Mumbai and I came back home. That when I alongwith respectable of the village talked

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with all the abovesaid accused then they started threatening us and said that put pressure wherever you want, we are not giving you any money. With such an incident, me, My father, family are mentally disturbed. We gave this money, by taking some money from our agent, some by selling land, some by selling jewellery, some by taking loan from relatives. We have suffered a huge loss and a huge fraud has been committed with us. So, legal action be taken against abovesaid accused. Thanking you. Dated 29.11.2022. Complainant Sd/- Dilraj Singh S/o S. Kanwaljeet Singh resident of Village Dehra Sahib, Tehsil Khadoor Sahib, District Tarn Taran 9814259647”.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. No specific allegations had been levelled against the petitioner. The complainant came back on 23.10.2022 whereas the complaint was moved only on 01.12.2022 i.e. after a gap of 37 days which is itself fatal to the prosecution case. All the alleged transactions were in cash and nothing was transferred in the account of the petitioner or the other co-accused. Moreover, there was no specific date or month of giving of the alleged amount of Rs.34 lacs. In fact, the petitioner and his family members were themselves victims and were duped on the pretext of sending them abroad. In this regard, the petitioner himself had sent a written complaint to the Senior Superintendent of Police, Tarn Taran bearing No.3565-DPO dated 01.11.2022 much prior to the complaint of the present complainant. Another FIR bearing No.250 dated 09.06.2023 had also been registered against the petitioner levelling similar allegations. It appeared that both the FIRs were registered on the same day by different complainant in connivance with each other. As the case was based on

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documentary evidence and the petitioner was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

4. The learned counsel for the State and the Counsel for the complainant while referring to the reply dated 15.02.2024 contend that serious allegations had been levelled against the petitioner. It was only in pursuance to a detailed enquiry got conducted by the Deputy Superintendent of Police that the instant FIR came to be registered on the complaint lodged by the complainant. The petitioner was a habitual offender with one other case of a similar nature registered against him. As the offence was *prima facie* established from the allegations levelled in the FIR and the investigation conducted so far, he was not entitled to the concession of bail.

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(4) RCR (Criminal) 977***', has 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

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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.***

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7. A perusal of the FIR would reveal that it was the petitioner and his accomplices who kidnapped the complainant, snatched a huge amount of money and gave him severe beatings. They also made him call home and extorted money from his father. Thus, the offence stands *prima facie* established against the petitioner. Even otherwise, he has one other case of a similar nature registered against him. There is nothing to suggest that the first informants in each case were in connivance with each other. As the investigation against the petitioner is to be taken to its logical conclusion, the custodial interrogation of the petitioner is certainly required.

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

9. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

February 22, 2024
sukhpreet

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