

**HIGH COURT OF PUNJAB AND HARYANA
CRM-M-22248-2023
Bench: Justice Jasjit Singh Bedi
Date of Decision: 29th November 2023**

SUNITA ...PETITIONER

VERSUS

STATE OF PUNJAB ...RESPONDENT

Legislation and Rules:

Section 438 of the Cr.P.C.
Sections 406, 420, 34 IPC

Subject: Anticipatory bail petition in a case involving alleged cheating and fraud in the context of a failed matrimonial alliance and financial transactions.

Headnotes:

Anticipatory Bail Petition – Cheating and Fraud Allegations – Petition under Section 438 of Cr.P.C. for anticipatory bail in FIR No.28, dated 10.03.2023, registered under Sections 406, 420, 34 IPC at Police Station Garhshankar, District Hoshiarpur, concerning allegations of cheating and fraud in a failed matrimonial alliance. [Para 1]

Background of the Case – Complainant Sonia alleges fraudulent conduct by the petitioner and others in a planned marriage, involving financial transactions totaling Rs. 26,13,400/- under the pretext of sending her abroad post-marriage. [Paras 2-4]

Petitioner’s Role and Arguments – The petitioner, wife of main accused Dilwar Ram, alleged to have played a significant role in the conspiracy and financial transactions. Petitioner’s counsel argues her non-involvement in financial dealings and false implication. [Paras 3, 4]

State’s and Complainant’s Contentions – Emphasizes the active participation of the petitioner in the fraud, supported by the confessional statement of co-accused Dilwar Ram and recovery of items given as gifts for the marriage. Argues against the grant of anticipatory bail. [Para 4]

Legal Principles Applied – Anticipatory Bail Considerations – Reference to Supreme Court’s judgment in Sumitha Pradeep Vs. Arun Kumar C.K. & Anr., emphasizing the consideration of prima facie case over the requirement of custodial interrogation for granting anticipatory bail. [Paras 5-6]

Decision – Petition dismissed due to the prima facie establishment of the offence and the necessity of the petitioner’s custodial interrogation for further investigation. [Paras 7-8]

Observations for Trial Court – Clarification that observations made in the anticipatory bail petition are solely for decision-making purposes and should not influence the trial. [Para 9]

Referred Cases:

Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870

Representing Advocates:

Mr. Deepak Verma for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab, for the state.

Mr. Sukhjit Singh for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.28 dated 10.03.2023 (Annexure P-1) registered under Sections 406, 420, 34 IPC at Police Station Garhshankar, District Hoshiarpur.

2. The present FIR came to be registered on the basis of a complaint submitted by Sonia D/o Raj Kumar to the SSP, Hoshiarpur and the same reads as under:-

“Application No.7075-PD dated 22.08.2022. To The S.S.P., Hoshiarpur. Subject: Application against Dilbar Ram son of Gurbachan Ram resident of Chohra and his wife Sunita, resident of village Chohra, police station Garhshankar (3) Pardeep Singh son of Baljit Singh (4) Ravinder Kaur wife of Baljit Singh (5) Baljit Singh residents of Ludhiana (Sahibzada Ajit Singh Nagar, H.No.11635 Street No.01, Ludhiana) and the maternal uncle of Ludhiana residents. Sir, It is requested that I, Sonia daughter of Sh.Raj Kumar, am the resident of village Chohra, police station Garhshankar, District Hoshiarpur. About one and a half year ago, when my father sold his house and we received the retirement amount, at that time my brother-in-law Balwinder Kumar had introduced Dilbar Ram son of Gurbachan Ram, resident of Chohra. Thereafter Dilbar Ram started talking about my marriage, in which his wife Sunita was also included. They introduced us with Pardeep Singh son of Baljit Singh in his house in Chohra. A discussion about my marriage with Pardeep took place, in which my mother, my younger brother and father Raj Kumar, brother-in-law Balwinder and his wife Tinu were included. It was discussed that the boy would take our daughter to U.K. For this purpose, about 25 to 30 lacs would be spent and boy and girl would go to U.K. It was also promised that they would sponsor the younger son later

on. Whatever expenses would be incurred, the same would be equally shared. Thereafter my brother-in-law and sister Tinu gave a sum of Rs.5 lacs to Dilbar Ram in his house in Chohra, where his wife Sunita and Pardeep Singh, Baljit Singh, Ravinder Kaur were present. Thereafter Rs.4 lacs were given at the time of the retirement of my father in the presence all the above persons. After 15 days thereafter, Rs.2 lacs were given by lending from the relatives. After two months, Rs.2 lacs more were given. Thus, Rs.13 lacs were given. On 15.03.2022, Dilbar Ram took a sum of Rs.2 lacs from us and gave to Gurchetan Singh and took Rs.5 lacs for house construction. The advance of Rs.2 lacs, which was given, it was agreed that the nearby colony, he would give after installing the interlocks within 15 days. On 02.08.2022, when we asked about the marriage and the house, then we met on 4th with Pardeep Singh, Ravinder Kaur, Baljit Singh in the house of Dilbar Ram. They fixed the 10th date, day Wednesday for the marriage and said that everything has been sorted and give Rs.1.50 lacs more and Rs.1.50 lacs were given on 05.08.2022 in the house of Dilbar Ram and we started preparing for the marriage and told to my sisters. When my brother-inlaw Prem Kainth and his wife Sunita discussed in the house then we suspected something as to what is being happened to us. It was discussed with Dilbar Ram about the shortage of time and in his house in the presence of his wife and in the presence of his children, it was discussed that the Haldi ceremony will be held in our house. In the morning on Monday, being the working day, they had left. Later on, it came to know that Dilbar Ram arranged the Haldi of the girl in his house and the place, which is of the Babas and the boy becomes ready there. Besides this, the gold worth Rs.2 lacs on our marriage was given to Dilbar, clothes worth Rs.2 lacs (expenses etc.). The barat came on 10/08 and the boy's family started becoming ready in the house of Dilbar. They after getting the shoguns, started demanding for another sum of Rs.2 lacs and said that I do not want to get married. He became panic either due to any ailment or drugs and fell down. The drama was started. When came to know, then we reached and discussed with boy as to what he is doing. He has taken so much amount from us and made the family to sit inside. After a long discussion, we told Dilbar Ram that we would not send our daughter. The girl has refused. After all this incident, Sunita wife of Prem Kainth dialled number 100 twice on mobile. They heard us and then we asked them to wait, we would tell. Now later on we came to know that Dilbar Ram and his wife Sunita has committed a cheating with us. My mother Gurdev Kaur and younger brother Prabhjot, 18 years, do not know anything. But they were usurping money for the last one and a half years. They were showing the fear that if you would discuss with anyone, then your family would be ruined, house would be sold. The

pretended baba and his wife are hands in glove with each other. In the end, it was told to Sunita that I can get them killed. If I wish, I would give Rs.40 lacs in the morning. He made the boy and his family to flee. My father could not do anything being handicapped. The family of Dilbar is giving life threats to our family. He has already committed cheating with us for a sum of more than Rs.25 lacs 50 thousand. My father is a handicapped person and they have taken the advantage of this. Feeling depressed, my father and mother tried to commit suicide. If immediate steps would not have been taken, then anything could have been happened to our family. You are requested to take immediate action against the accused persons. The requisite proofs are enclosed herewith. I shall be highly thankful to you. Thanking you, Sd/- Sonia daughter of Sh.Raj Kumar, resident of village Chohra, police station Garhshankar, District Hoshiarpur, mobile No.98157-49764, 8427949764, dated 11.08.2022. As per the report the application No.7075-PD dated 22.08.2022 from Sonia daughter of Sh.Raj Kumar, resident of village Chohra, police station Garhshankar, District Hoshiarpur, against Dilbar Ram son of Gurbachan Ram resident of Chohra and his wife Sunita resident of village Chohra, police station Garhshankar, Pardeep Singh son of Baljit Singh, Ravinder Kaur wife of Baljit Singh and Baljit Singh residents of Ludhiana, Sahibzada Ajit Singh Nagar, Ludhiana for inducing for solemnising the marriage and usurping the money, received from Deputy Superintendent of Police Garhshankar, District Hoshiarpur after inquiry, in which it has been recommended to register a case against Dilbar Ram son of Gurbachan Dass, Sunita wife of Dilbar Ram, residents of Chohra, Pardeep Singh son of Baljit Singh, Baljit Singh son of Rawal Singh, Ravinder Kaur wife of Baljit Singh, residents of Sahibzada Ajit Singh Nagar, Ludhiana, under section 406, 420, 34 IPC. The same has been received at the police station through post after the approval of SSP, Hoshiarpur vide order No.979-PC dated 09.03.2023 for the registration of the case against the above accused persons. After the registration of the case, the original application, alongwith inquiry report and copy of the FIR is being handed over to SI Rakesh Kumar 633, police station Garhshankar for further investigation. The control room is being informed. DDR No.26 dated 10.03.2023 at 03.35 PM.”

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as she is the wife of the main accused Dilwar Ram. The entire dispute stems out of a failed matrimonial alliance between the complainant and Pardeep Kumar son of Ravinder Kaur

and Baljit Singh, the co-accused. The financial transactions as referred to in the FIR were between the family of the complainant girl and the boy. Neither the petitioner nor her husband had any role to play in that regard. In fact, on the date of the marriage i.e. 10.08.2022, Pardeep Kumar the prospective groom and son of the coaccused suddenly fell down and became unconscious. Because of the same, the complainant and her family members got scared and after the boy regained consciousness, the complainant refused to marry the boy on the grounds that he seemed to be suffering from some ailment. The petitioner and her husband had been named in the FIR because her husband Dilwar Ram was a witness to an agreement to sell dated 15.03.2022 between the father of the complainant and one Gurchetan Singh in which the sale deed had not been executed on account of Government restrictions. As Dilwar Ram had been granted the concession of regular bail and the challan stood submitted against him, the custodial interrogation of the petitioner was not required and therefore, she was entitled to the concession of anticipatory bail.

4. On the other hand, the learned State counsel along with the counsel for the complainant while referring to the reply dated 08.06.2023, contend that the petitioner and her husband, accused Dilwar Ram had committed a fraud of Rs.26,13,400/- with the complainant on the pretext of sending her abroad after solemnizing her marriage with accused Pardeep Kumar son of the co-accused Baljit Singh and Ravinder Kaur. Dilwar Ram had been arrested and had suffered his confessional statement admitting the allegations levelled in the FIR. Certain recoveries of articles purportedly given by the complainant party to the accused as gifts on account of the impending marriage were also recovered from Dilwar Ram. A perusal of the FIR would clearly show that the petitioner was an active participant along with her husband and other accused. As the offence stood *prima facie* established against her, she was not entitled to the

concession of anticipatory bail and even otherwise, the investigation was to be taken to its logical conclusion for which her custodial interrogation was necessary.

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 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. 7.

In the instant case, a bare perusal of the FIR would show that all the accused misled the complainant and her family members on the pretext of getting her married to Pardeep Kumar son of co-accused Ravinder Kaur and Baljit Singh and for the said purpose took a huge amount of money. However, on the date of the marriage itself Pardeep Kumar at the instance of the other accused feigned illness because of which the marriage could not take place. It is apparent that when the money was handed over to the co-accused Dilwar Ram all the accused were present and were thus ware of the fact that the complainant has been deceived to part with money. Thus, the conspiracy between all the co-accused to cheat the complainant is writ large. Merely because Dilwar Ram has been granted the concession of regular is not a ground to grant the concession of anticipatory bail to the petitioner as the offence stands *prima facie* established. Further, the custodial interrogation of the petitioner is certainly required to take the investigation to its logical conclusion.

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

9. However, observations made hereinabove are only for the purpose of deciding this anticipatory bail petition 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.

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