

HIGH COURT OF PUNJAB AND HARYANA**Bench: Hon'ble Mr. Justice Rajesh Bhardwaj****Date of Decision: 27.12.2023**

CRM-M-57554-2023 (O&M)

Sukhjinder Singh**Petitioner****versus****State of Punjab** **Respondent****Legislation:**

Section 438 of the Criminal Procedure Code (Cr.P.C.)

Section 420 of the Indian Penal Code (IPC)

Section 13 of the Punjab Travel Professionals (Regulation) Act,
2014

Section 138 of the Negotiable Instruments Act

Subject: Denial of Anticipatory Bail in a Case Involving Allegations
of Cheating and Fraud**Headnotes:**

Anticipatory Bail – Denial of anticipatory bail in a case involving cheating and fraud – Petitioner, accused of defrauding complainant of Rs. 20 lacs under pretext of sending his son abroad, sought anticipatory bail after being denied by the Additional Sessions Judge – High Court finds the need for custodial interrogation and denies anticipatory bail.

Investigation – Importance of custodial interrogation in cases with serious allegations and insufficient evidence – Court emphasizes

the necessity of custodial interrogation for effective investigation, especially when the accused is suspected of serious offences like fraud.

Judicial Discretion – Exercise of discretion in granting anticipatory bail – Court balances individual liberty with societal interest, following principles laid down in Gurbaksh Singh Sibbia Vs. State of Punjab and State Vs. Anil Sharma – Anticipatory bail denied due to seriousness of accusations and need for effective investigation.

Decision – High Court upholds lower court's decision denying anticipatory bail – Petitioner's application dismissed on grounds of serious allegations, need for custodial interrogation, and lack of convincing evidence to refute charges.

Referred Cases :

- Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632
- State Vs. Anil Sharma, (1997) 7 SCC 187

Representing Advocates:

Mr. Guralp Singh Kahlon for the petitioner.

Mr. Siddharth Attri, A.A.G., Punjab.

Ms. Bhupinder Kaur for the complainant.

RAJESH BHARDWAJ, J. (Oral) CRM-M-47948-2023

Allowed as prayed for.

CRM-M-57554-2023

Present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.75 dated 29.07.2023 under Sections 420 IPC and Section 13 of Punjab Travel Professionals (Regulation)

Act, 2014, registered at Police Station Sadar Nawanshahr (District SBS Nagar) Annexure P-1. Adumbrated facts of the case are that the present FIR has been lodged on the statement of complainant, namely, Balvir Singh. It has been alleged by the complainant that on 28.04.2023 he filed a complaint against Sukhjinder Singh and his wife Paramjeet Kaur for cheating him on the pretext of sending his son abroad. He alleged that the said complaint was marked to the D.S.P. Women Cell but Sukhjinder Singh by taking him in confidence had given one affidavit of his near one Kulwinder Singh and had also given four cheques drawn on Punjab National Bank as security. Hence, he closed his first file on the ground that talks of compromise were going on between them. However, said Sukhjinder Singh had taken from him the passport of his son for stamping Visa. Sukhjinder Singh was demanding Rs.25 lacs more from him for returning his passport. It was requested that the action be taken against culprits i.e. Sukhjinder Singh, his wife Paramjeet Kaur and witness Kulwinder Singh. On the registration of this FIR, the investigation commenced. Accused-petitioner Sukhjinder Singh apprehending arrest approached the Court of learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar for grant of anticipatory bail. However, after hearing both the sides, learned Additional Sessions Judge, declined the same vide his order dated 08.09.2023. Aggrieved by the same, the petitioner has approached this Court praying for grant of anticipatory bail by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He has submitted that the petitioner is not an agent rather he is doing job of Tele- caller at a salary of Rs.7,000/- per month with The Emigrant Group having their Head office at SCF No.1, 1st Floor, Cinema Road, New Grain Market, Mullanpur Mandi, District Ludhiana since 07.02.2018. He has submitted that the complainant had taken the service of Emigrant Group and at that time the petitioner was working as an employee with the said group. He has submitted that after the death of the Managing Director of the Emigrant Group, under whom the petitioner was employed, the complainant started blackmailing the petitioner and on the basis of same, he had filed a false and frivolous FIR against him. He has stated that the complainant and his son have also filed the affidavit wherein they had stated that all the issues between them have been resolved and they will not pursue any civil or criminal litigation against the petitioner. It is stated that son of the complainant himself with his consent had sent his passport to Dakshish Shah Company with whom the petitioner has no concern. He submits that the alleged payment made by the complainant was

sent by the petitioner to Aliasgar Tinwala and nothing has been kept by the petitioner. He submits that the petitioner has taken no money from the complainant as alleged and thus, he has no complicity in the case as alleged by the complainant. He has submitted that neither the passport of son of the complainant is with the petitioner nor any money paid by him is retained by the petitioner. It is stated that the false implication of the petitioner is writ large. He submits that no case for the custodial interrogation is made out and thus, the petitioner deserves to be granted anticipatory bail.

Learned counsel for the complainant has vehemently opposed the submissions made by counsel for the petitioner. She has submitted that the petitioner and his wife had cheated the complainant by fraudulently taking about Rs.20 lacs from the complainant on the premise of sending his son abroad. She submits that the passport of son of the complainant was taken by the petitioner on the pretext of stamping visa and till date the same has not been returned. She submits that neither the son of the complainant was sent abroad nor money taken from him was returned by the petitioner. She has submitted that the complainant paid about Rs.20 lacs to the petitioner as security and the petitioner issued four cheques of Punjab National Bank to the complainant. She has submitted that once the complainant found himself cheated he presented the cheques issued by the petitioner to the Bank and all the four cheques were dishonoured. She has submitted that the complainant has now filed the complaints under Section 138 of the Negotiable Instruments Act in the Court of Chief Judicial Magistrate, SBS Nagar which are pending adjudication. She submits that the contention raised by the counsel for the petitioner that he was only an employee of the Emigrant Group is only an excuse to wriggle out of the case instituted against him. She has submitted that the petitioner by withholding the passport of the son of the complainant is blackmailing the complainant to pay Rs.25 lacs more. She submits that no case for the grant of anticipatory bail to the petitioner is made out in the facts and circumstances of the case and hence the petitioner's petition deserves to be dismissed.

Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner. He has submitted that the petitioner has cheated the complainant in a well planned conspiracy. He submits that the petitioner has taken hefty amount from the complainant by playing fraud. He submits that neither son of the petitioner has been sent abroad nor the passport taken by him is returned to the son of complainant. He has submitted

that the petitioner is a habitual offender. It is submitted that none of the accused could be arrested till date. The passport and the money paid is also not recovered.

He submits that in the facts and circumstances of the present case, the custodial interrogation of the petitioner is required. He further submits that in the overall facts and circumstances, no case for grant of anticipatory bail is made out and the petition deserves to be dismissed.

Heard.

From the facts and circumstances of the case, it emerges that the complainant has alleged that the petitioner on the pretext of sending his son abroad has taken about Rs.20 lacs from him. The money was paid and the passport of his son was also given to the petitioner. The petitioner issued four cheques drawn on Punjab National Bank. Thereupon, neither the son of the petitioner was sent abroad nor the money was returned. The passport allegedly given to the petitioner is also not returned. Though the petitioner has submitted that the passport was sent by the complainant by courier and the same is not in his custody. However, it is improbable that the visa could be provided by the petitioner without the passport. The case in hand is full of allegations and counter allegations. The matter requires a free and fair investigation. The investigating agencies so far have not been able to arrest any of the accused, thus, this Court is of the opinion that custodial interrogation of the petitioner is required in the present case and as such he is not entitled for the grant of anticipatory bail.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

As per the law settled by the Hon'ble Supreme Court, in **Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632**, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to

the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

The Hon'ble Supreme Court in **State Vs. Anil Sharma, (1997) 7SCC 187**, held as under:-

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 ensconced with a favorable 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 materials 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 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 a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

Keeping in view the overall facts and circumstances, the petitioner fails to qualify for the grant of anticipatory bail on the anvil of the law settled.

Resultantly, the petition being devoid of merits, is dismissed.

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