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CNR no. : HPHA01-001948-2023
Case Type : Bail Application
Case no.(Regn.no.) : 158 of 2023
Case year : 05.08.2023

In the Court of Vikas Bhardwaj, Sessions Judge, Hamirpur, H.P.

Bail application no. : 158 of 2023
CIS Registration no. : 158 of 2023
CNR no. : HPHA01-001948-2023
Date of Institution : 05.08.2023
Date of Decision : **16.08.2023**

Yogendra Sahu son of Sh. Sachidanand Sahu, resident of House No.123, Danga Para, P.O. Kachra Para, 24-Pargana- North (W.B.).

...Applicant.

-Versus-

State of Himachal Pradesh through Public Prosecutor Hamirpur, District Hamirpur, H.P.

...Respondent.

Application under Section 438 of Cr.P.C. for the grant of pre-arrest bail.

For the applicant : S/Shri Rohit Sharma, K.D.Bhardwaj & Keshav Sethi, Id. counsel.
For the respondent : Shri Sandeep Agnihotri, Id P.P.

ORDER

The petitioner seeks bail in anticipation of his arrest in FIR No. 86 of 2019, dated 08.08.2019, registered under Sections 420, 467, 468, 471 & 120B, IPC, at Police Station Bhoranj, District Hamirpur, HP.

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2. Shorn of minutiae, the police case, as made out from the status report filed in response to the present bail petition, is seen to have its genesis in a written complaint lodged by one Ravinder Kumar, resident of Village Hayod, P.O. Awahdevi, Tehsil Bhoranj, District Hamirpur, HP (in short the 'complainant'), on 8/8/2019. It was averred in the complaint that the complainant had been beguiled by Meena Kumari, Sapna Rani and Rajneesh Kumar, all residents of Village Dadu, P.O. Badoh, Tehsil Bhoranj, District Hamirpur, HP, and to pay them ₹6,00,000/-, on the assurance of providing employment to the wife of the complainant. It was stated in the complaint that the aforesaid persons had similarly cheated numerous other persons as well, the names of some of whom were also mentioned in the complaint. As such, the complainant demanded strict action against the aforementioned persons, i.e., Meena Kumari, Sapna Rani and Rajneesh Kumar.

3. On the complaint, the instant FIR was registered and initial investigation was carried out by ASI Paramjeet Singh. During investigation, the I.O. took into possession the cheques issued and the appointment letters received by other persons alleged to be victims of the cheating by the aforementioned persons. Their statements were also recorded. Thereafter, investigation was entrusted to SI Rajesh Kumar, who scrutinized the bank account details of the accused Sapna Rani, and on the basis of the same, she was arrested and interrogated. Bank details of one Vijay Kumar

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were also examined during investigation, and on deeper probe, it was found that the real name of Vijay Kumar was Basant Patel, resident of Kothapet, District Rangaraddy (Telangana), who had opened the account in a fictitious name. Basant Patel was interrogated on 07.02.2020, who disclosed about his having opened the account in the name of Vijay Kumar and also that he would receive the spoils of the cheating committed by allurements of people on false promises of providing employment, in the account opened by him, and would thereafter transfer the money to the accounts of Garun Kumar, Sunita Mandal and Akhtari Begum etc., who were arraigned as accused on the basis of the statement.

4. The aforesaid three accused named by Basant Patel were also interrogated by the police and on perusing their bank account details, hefty amounts were found to have been received in the same, from the account of the prime accused, Basant Patel. Money was also seen to have been withdrawn by the aforesaid persons, from their accounts, through ATM. The specimen handwritings and signatures of the above named accused were obtained and sent for analysis to the Forensic Science Laboratory. During the course of investigation, it was found that the appointment letters furnished by the accused to the victims, had never been issued by the institutes/establishments, by which they were purported to have been issued. All the aforesaid accused were found to have committed offence of cheating various people by

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holding out false promises of providing employment and to have distributed the proceeds of the crime amongst themselves.

5. The status report filed by the police further reveals that the accused Garun Kumar, mentioned above, was arrested on 04.10.2022. During his interrogation, he disclosed that the present petitioner-accused Yogendra Sahu was also working with him in Fly Aviation Company, Damdam, Kolkatta (WB), upon which a special team was sent to apprehend the present petitioner-accused. However, he was not found at his residence, upon which proceedings under Section 82 Cr.P.C. were got instituted by the police, and warrants for his arrest were obtained. On 24.06.2023, the police visited his residence to execute the warrants, but he was not found at home. As per the police report, the police came to know from reliable sources that the petitioner-accused was coming to Hamirpur in some personal work on 10.08.2023, upon which he was intercepted at Hamirpur and brought to the police station for interrogation. However, an order of interim bail granted by this Court in favour of the petitioner-accused was found on his mobile phone, upon which he was set free by the police. The report further contained a recital that during investigation, the petitioner-accused denied having any connection with the other accused Sapna Rani, Basant Patel, Garun Kumar, Akhtari Begum and Sunita Mandal and also having issued any fake appointment letters or having received money by cheating people on that basis. The petitioner-accused is

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reported to have asserted that the accused Garun Kumar owed him ₹20,000/-, for a consignment of T-shirts which the former had purchased from the petitioner-accused, but had not made the payment. The police have opposed the bail application on the ground that the petitioner-accused was required to be interrogated in custody, so as to elicit information from him and further on the ground that there being heavy public outrage against the act of the accused, he was not entitled to be set free on bail.

6. I have heard S/Sh. Rohit Sharma, K.D.Bhardwaj and Keshav Sethi, learned counsel for the bail petitioner, as also Sh. Sandeep Agnihotri, learned Public Prosecutor for the State. I have also perused the material available on the police file.

7. The learned counsel for the bail petitioner have fervently argued that it was sufficiently borne out from the investigation hitherto carried out that the bail petitioner had nothing to do with the offence alleged against him, and had apparently been wrongly implicated by one of the co-accused, who was inimical towards the petitioner-accused, since money was due by him towards the latter. They have further contended that there was no material on record to even remotely connect the petitioner-accused with the fake appointment letters or with the money wrongfully begotten by the other accused. They have urged that there being no justification of curtailment of the liberty of the petitioner-accused, he was entitled to

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be granted pre-arrest bail, the conditions of which would be strictly adhered to by him.

8. Per contra, Sh. Agnihotri, learned Public Prosecutor has vociferously opposed the prayer made in the application. He has argued that custodial interrogation of the petitioner-accused was imperative in the facts and circumstances of the case, and also on the ground that the offence alleged against the petitioner-accused being a financial crime of serious nature, did not warrant any favourable discretion being exercised in favour of the petitioner-accused.

9. The principles guiding the discretion of the court while dealing with a prayer for bail, as culled out by the Hon'ble apex court in State of Uttar Pradesh Vs Amarmani Tripathi (2005) 8 SCC 21, can be summed up as follows:

- I. Prima facie reasonable grounds to believe that the accused has committed the crime alleged
- II. nature and gravity of the offence;
- III. severity of punishment in case of conviction;
- IV. danger of the accused absconding or fleeing from justice, if enlarged on bail;
- V. character, position, behaviour, means etc. of the accused;

VI.the nature of accusation and reasonable apprehension of the accused tampering with the prosecution witnesses.

10. The aforesaid factors and parameters have been revisited and reiterated by the Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre vs State of Maharashtra and others (2011) 1 SCC 694**, wherein the Hon'ble court while placing reliance on its earlier authoritative pronouncement in **Gurbaksh Singh Sibia vs State of Punjab (1980) 2 SCC 565**, in addition to the factors enumerated above, has also propounded parameters like the exact role of the accused, antecedents of the accused and likelihood of his repeating similar or other offences. It has categorically been observed therein that while considering the prayer for grant of anticipatory bail, balance has to be struck between two factors namely; no prejudice should be caused to the free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused.

11. In the present case, the first thing which catches the eye of the court is that the FIR in question was registered as far back as on 8/8/2019, i.e., more than four years ago. Moreover, it is also discernible from the material available on record, and the status report filed by the police, that the petitioner-accused was not initially named in the FIR, nor his name had sprung up independently when initial investigation was carried out in the case. His name is found to

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have been taken at the fag end of the investigation, and that too only by one of the accused, Garun Kumar, whilst the latter was under interrogation by the police. There is hitherto no material available on record, which could establish a direct connection of the petitioner-accused, with the offence alleged against him.

12. That apart, the allegation against the petitioner-accused, apparently, is that he had cheated unassuming victims, in conspiracy and connivance with the other co-accused. This being so, he has not been attributed any role in the offence, the gravity and seriousness of which was more than that ascribed to the other co-accused. On the contrary, the court finds some force in the contention of the learned counsel for the bail petitioner, that the imputations against the petitioner-accused, viewed in the light of the material available against him, place the case of the petitioner-accused at a better footing than the other co-accused, at least for the purpose of grant of bail. Significantly, all the other co-accused mentioned in the FIR are admittedly at large on bail, including the accused Basant Patel, who had received all the money in his account, and as per the police itself, is the prime accused in the case. In the above circumstances, the petitioner-accused is well within his right to claim parity with them for the same relief. In any case, material evidence in the case already stands collected by the police. The complicity of the present petitioner-accused in the crime at hand, can well be established on the basis of the documentary

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and forensic evidence. He can be interrogated for soliciting information, for which he would join the investigation and his continued custody with the police does not seem necessary. Moreover, the confinement of the petitioner-accused on the ground of threat of dissipation of evidence or tampering therewith cannot also be justified, for the reason that it has been over four years since the FIR was lodged, and there was otherwise ample opportunity with the petitioner-accused to have tampered with the evidence, if he so intended. The contention of Sh. Agnihotri, learned public prosecutor, that the other co-accused have remained in custody for sometime, after which they were granted bail, is neither borne out from the status report, nor can the same be made the basis to commit the petitioner-accused to police custody, when no justification of the same is otherwise made out. The status report itself shows that the petitioner-accused has since been associating with the investigation, and necessary enquiries are being made from him. For the aforesaid reasons, there *ex facie* appears to be no justification of the pre-trial incarceration of the bail petitioner, and that too after a yawning gap of four years of the lodging of the FIR.

13. It is trite that while grant of bail is the general rule, denial of it is an exception. It also needs no iteration that personal liberty of an individual is a precious human right and has to be zealously guarded. The same cannot be fettered or curtailed unless the individual is found not entitled to the same, after following the due

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process of law. The link of the accused with the crime alleged against him would be required to be proved at the trial, and if proved, the same would lead to his conviction and consequent punishment. However, the facts of the case do not warrant any deviation from the settled canons of jurisprudence, as noted above.

14. It is also to be borne in mind that purpose of bail is neither preventative, nor punitive, but to ensure the presence of the accused at the trial, as has been reiterated by the Hon'ble apex court in **Sanjay Chandra vs CBI (2012) 1 SCC 40**. The said principle has subsequently been reiterated by the Hon'ble apex court in **Manoranjana Sinh alias Gupta vs CBI (2017) 5 SCC 218**, wherein it has been observed that the proper test to be applied in solution of the question whether bail should be granted or refused, is whether it is probable that the party will appear and take his trial.

15. The petitioner-accused is, no doubt, a resident of another State, however, his permanent address is known to the police. The accused is carrying on an established business in his State, and there is no imminent likelihood of his fleeing from justice or not making himself available for trial. There is also prima-facie no material to sustain an apprehension that if enlarged on bail, he could tamper with the prosecution evidence or adversely affect the trial, especially in view of the fact that the material witnesses in the case would predominantly be the complainant, and other purported victims. In any case, by any such misdemeanour or misadventure,

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the petitioner would only run the risk of the liberty granted to him, being forfeited.

16. Thus, keeping the entire facts and circumstances in view, I am of the considered opinion that the petitioner-accused is entitled to be released on bail, pending trial. Consequently, the petition is allowed. The order granting interim bail to the petitioner, is made absolute with a slight modification, and it is ordered that in the event of his arrest in the instant case, the petitioner-accused be released immediately upon his furnishing **personal bond in the sum of Rs. 75,000/-, with two sureties in the like amount, one of whom shall be a local surety**, to the satisfaction of the arresting/investigating officer. However, the bail is being granted subject to the following conditions:-

1. That the bail petitioner shall attend the Court on each and every date of hearing as per the conditions of the bonds executed;
2. That the bail petitioner shall not commit an offence similar to the present one;
3. That the bail petitioner shall not leave India without the prior permission of the Court;
4. That the bail petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence;

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5. That the bail petitioner shall join the investigation of the case as and when required by the police;
6. That the bail petitioner shall not hamper the investigation and shall not terrorise or threaten the witnesses.

17. It is made clear that in the event of contravention of any of the aforesaid condition(s), it would be open to the prosecution to approach the court for cancellation of the bail granted to the petitioner-accused. It is also clarified that the observations made herein above are strictly for the purpose of the disposal of the bail petition, and nothing contained herein shall be construed as an expression of opinion on the merits of the case. With these observations, the petition is disposed of. The file after needful be consigned to the records.

Announced in open court, this 16th day of August, 2023

(Vikas Bhardwaj)
Sessions Judge,
Hamirpur (H.P.)

/dr/