



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

221-2

CRM-M-51924-2024

DATE OF DECISION: 11.02.2025

KAMLESH

...PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Abhishek Kharb, Advocate for
Mr. K.P Singh, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

Mr. V.K. Agnihotri, Advocate
Mr. A.K. Agnihotri, Advocate and
Mr. Deepak Vashisth, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

This petition has been filed under Section 482 of the Bharatiya Nagrik Suraksha Sanhita, 2023 for grant of anticipatory bail to the petitioner in FIR no. 465 dated 01.08.2024 (Annexure P-1) under sections 420, 467, 468, 471 & 120-B of IPC registered at Police Station Adarsh Nagar, Ballabhgarh, Faridabad.

2. Facts

Prosecution story set up in the present case as per the version in the FIR reads as under :-

'To Commissioner of Police, Headquarters Sector-21C, Faridabad, Haryana. Regarding taking immediate action on the subject complaint. Reference-Complaint against Mr. Manish (Mob. 8570848485) son of Mr. Deshraj, Mrs. Kamlesh (Mob.



9812035769), Mrs. Sonam (Mob. 8930744195), Mr. Ashish 4 (Mob. 9034682886) son of Deshraj and Deshraj (Mob. 8160247505) resident of Gali No. 10 Adarsh Colony, Palwal regarding cheating and fraud, to Police Station Cyber Crime Cell Ballabgarh. Sir, in the above context, I Yashpal Singh Tanwar son of Sabliyan Singh House No. 1247, Sector 64, Faridabad, Haryana have given a complaint dated 02.04. 2024 to Cyber Crime Cell Ballabgarh. Sir, in this case my life savings have been swindled and cheated by the culprits. Therefore, I request you to please ensure action in this case as soon as possible. The gist of the case is as follows that I, Smt. Kamlesh w/o Mr. Deshraj Mahawal, along with Shri Deshraj Mahawal and his two sons Manish Mahawal and Ashish Mahawal, have connived with each other and usurped my life savings under a pre-planned conspiracy. I have retired from the post of Superintendent Engineer from Haryana Irrigation Department. I had retirement money. After my retirement, I started getting calls from people such as insurance consultants, property dealers and investment consultants who started giving me different advice to invest my money. One day I received a call from Manish whose mobile number is 8570848485 and he told me that he is working in Bharat Electronic Ltd. as a scientist. He also sent me his appointment letter on WhatsApp and said that these days I am working on some secret mission with Mr. Ajit Doval NSA on deputation due to which our life is in danger and to compensate for this the government gives us property at subsidized rate and I have taken a 1100 yard villa and a showroom in the newly built BEL staff colony whose payment has to be made in installments and I have a 350 sq. yard DLF villa in the name of my younger brother Ashish and I (Manish) will pay its installments too and he told that I get tenders of upto 5-7 thousand crores at my seat due to which I have become well acquainted with big builders due to which I have taken two shops from M3M people in Cosmopolitan Mall Gurgaon at a low rate and the registry of the above property and He sent us the photo through his Whatsapp so that we could believe him. After this, I kept getting calls from him on Whatsapp saying that you can become co-partner by investing your money in the property I told you about. This property will remain in my name for 5 years and your name will be added in the co-borrower category, and I (Manish) will pay its installments in the accounts but after 5 years the property will be transferred to your name and after that you will pay the installments yourself. To justify this, he made his father Deshraj, mother Kamlesh, brother Ashish and his wife Sonam talk on video call and said that whatever Manish is saying is true and at the right time the properties that he has



told you about will be transferred to your name and showed all the property papers through video call and sent their copy on Whatsapp. 1. In March 2019, Manish said that Adani is building a new colony on Sector 63, Golf Course Extension Road. I (Manish) will get you a 350 sq. yard house with 4 floors. The total cost of which will be Rs. 3,43,00000/- and you will have to pay an installment of Rs. 78,888 per month for 30 years. You will face difficulty in paying installments only for 2-3 years till the construction is completed. After that you will start getting rent and there will be no problem. Manish sent the allotment letter issued by the government on WhatsApp. For this we started making the following payments

14-03-2019 450000 RTGS SBI Yashpal

05-02-2020 157000 RTGS PNB Vijay

4733280 Received from the Commission of CNG Filling Station

2. Apart from this, Manish told me that M3M has launched a project by the name of International Financial Centre in which he said that B.E.L has taken a very big space for office in this building. And in future its rates will increase a lot, you also make payment for the shops in it and till these shops are not built, I will get you 22 lakh rupees per year from the builder. So we started paying money for two shops, one of 1500 Sq. Ft and one of 800 Sq. Ft. The price of which he told as 18234700 and 8748200 rupees which is the launch rate by the builder in the market.

It was less than that so we paid the money.

30.04.2019 500000 Cash Deposit Vijay

04.05.2019 500000 Cash Deposit Yashpal

13.05.2019 500000 Cash Deposit Gaurav

01.06.2020 500000 RTGS

14.01.2020 1400000 RTGS S.B.I.

23.01.2020 400000 RTGS PNB

02.11.2020 860000 RTGS S.B.I.

25.11.2020 850000 RTGS S.B.I.

27.08.2021 500000 RTGS S.B.I.

06.10.2021 500000 RTGS S.B.I.

06.10.2021 250000 RTGS S.B.I.

29.09.2021 500000 RTGS S.B.I.

08.10.2021 250000 RTGS PNB

22.04.2022 2200000 RTGS Return Received from Builder as a annual Commitment

22.04.2023 2200000 RTGS Return Received

22.04.2024 2200000 RTGS Return Received

3. Similarly, under a pre-planned conspiracy, Manish told me that Omaxe Builder has launched a new project in Chandni Chowk Delhi by the name of Omaxe Chandni Chowk. Manish



said that he will get you a ground floor shop of 399 sq ft for a total price of Rs 2,75,3000. The installment of which will be Rs 18,35,400 per year for the next 15 years. He also showed me the copy of the allotment and the property identification number in his laptop.

18.10.2019 700000 A/c Transfer

25.10.2019 450000 A/c Transfer

18.03.2020 300000 A/c Transfer

06.05.2020 1796000 RTGS BOB Vijay

14.06.2021 1595000 RTGS S.B.I. Gaurav

15.06.2021 120000 RTGS P.N.B. Vijay

4. Similarly, in the year 2020, Manish and his father Deshraj told me about CNG Filling Station Aahlapur Delhi Palwal Road, the price of which was Rs. 1,31,20000/- and after making 50% payment, the company will give commission on the sale at the rate of 90 paise to 1.20 per kg and the company will continue to operate for 2 years and the rest of the payment will be made from the commission every month and I will adjust the remaining amount in the installments of the house you have bought from Adani so that you do not face any problem. And we liked this proposal, so we gave the money.

6. Then Manish told us that DLF Builders has launched a project in Kasauli Himachal Pradesh by the name of D.L.F Samavana in which Manish said that I have taken plot no. A-25 of 600 sq. yard and I will get you plot A-29 of 1077.78 sq. yard. The cost of which will be Rs. 2,68,75,000 including construction and you will have to pay Rs. 1570750/- per year as installment for 15 years which will have to be paid in the month of December. And after 3 installments you will start getting rent of Rs. 1,25,000 per month because DLF will build a building in this plot and open a guest house. Therefore, you will not have any problem in paying the installment every year. So, after liking the proposal, we took a gold loan by mortgaging our jewelry in the bank and started paying the installments. The payment made by us was made in this type.

02.03.2021 1900000 RTGS B.O.B. Vijay

06.03.2021 100000 RTGS C.B.1. Gaurav

09.04.2021 600000 RTGS C.B.I. Vijay

09.04.2021 500000 RTGS P.N.B. Vijay

09.04.2021 2130000 RTGS S.B.I.

10.11.2021 950000 RTGS B.O.B. Vijay

10.11.2021 100000 RTGS P.N.B. Vijay

10.11.2021 50000 RTGS S.B.I. Yashpal

7. Similarly, Manish told us that your house is also being built in Gurgaon and you have shops and your CNG pump is also in Palwal, so now you should prepare to stay in Gurgaon. Thus, he



sent us three proposals on WhatsApp, one of which was Maruti showroom, KIA showroom and the third was TT Motors showroom. After seeing all three on WhatsApp, we liked the TT showroom, whose rent he told as 12 lakhs per month and assured a 6% increase per year, the price of which he told as Rs 6,90,70,154 after subsidy and asked us to give Rs 2 crore, which we got RTGS done in his account on different dates. And he asked us to deposit his share of the remaining amount and asked us to divide the rent according to the capital. He also transferred some rent from his account to our accounts so that we could trust him.

28.02.2022 2500000 RTGS S.B.1. Yashpal

11.04.2022 2500000 RTGS B.O.B. Vijay

19.04.2022 1500000 RTGS S.B.I. Yashpal

25.04.2022 1000000 RTGS S.B.L. Gaurav

18.06. 2022 3000000 RTGS S.B.I. Gaurav

18.06. 2022 7500000 RTGS B.O.B. Vijay

29.06. 2022 2000000 RTGS S.B.I. Gaurav

7/22 to 3/24 360000x20

7200000 Share of Rent from July 22 to March 24

In this way we transferred the above amount to Mr. Manish Mahawal, Account No. 2328101040642 Canara Bank, Palwal. After making the payment, when we asked for the property papers, he said that I have kept the original papers safe in the office vault. I can only show you because you will get the papers only after 5 years, to which we said yes, but instead of showing us the physical papers, he showed us the government approval, property identification number etc. in his laptop. When we told Mrs. Kamlesh, Deshraj, Ashish and Sonam on the phone about this that we gave money to you blindly on your trust, then why are you not showing us the papers, then everyone said in one voice that you do not need to worry at all. Your property will come to you when the time comes. But you will get it as long as you keep getting returns every month. Mr. Deshraj and Kamlesh even said that we have seen the papers, everything is fine and you should not worry about anything. After this, we started getting suspicious and discussed this matter with many of our family members and everyone said that it doesn't seem right. Check with the builder's office about this. When I checked with the offices of M3M, Adani CNG, Adani Samsara and Omaxe and DLF, no property was found in Manish's name. Whereas on 12.11.2022, Manish and Deshraj told us about two shops in IFC and said that they have taken these shops, you should be rest assured and showed a showroom in Global Foyer Mall in which TT Motors's showroom is running. After some time, Deshraj called and told that Manish's CBI inquiry has started in BEL and



he is asking me to sign these papers for the money he had given for your property. After doing this, he sent me BEL's computerized paper on WhatsApp which was prepared by him from his laptop. 'On which the property ID was written which was written in Manish's handwriting (Annexure-1) and after 10-15 days when I spoke on the phone he said that ED has 'eized your property and 29eople call Manish to the office daily and make him sit there the whole day. And his two phones and laptop have also been seized. When I asked for ED order or any other papers he started making excuses and did not give any satisfactory answer and Manish even stopped talking on the phone. When I investigated this matter I found that there is no case from CBI, ED in this matter and Manish has switched off his phone but after a few days Manish called and said that I made a mistake and the property I told you about does not exist and I have bought another property and wrote a list of properties in his own hand and gave it on WhatsApp (Annexure-2) and said that you choose one from these and tell me and I will get NOC from the government and get it registered in your name by 30th October, the details of the registry expense of which were also sent to me through WhatsApp which is attached (Annexure-3) and then gave time till 15th November, in this way they kept delaying the matter. When I got worried and inquired, a surprising fact came to light that Manish does not work in BEL and all this conspiracy was hatched by Manish in collusion with his father Deshraj, mother Kamlesh, wife Sonam and brother Ashish under a well-planned conspiracy to usurp our money. When I found out about this, I felt very sad and I went into depression because Manish had fraudulently usurped my life's earnings through conspiracy. In this way, all of them together and conspired to cheat me and ruined my family and now they are threatening to kill me if I ask for the money. Hence, I request you to get my case investigated by Cyber Crime Ballabgarh because my house is near this police station and I am a senior citizen and being close, I will not have any problem in coming and going. And I hope to get justice from here soon. Thank you Applicant sd Yashpal singh tanwar Yashpal Singh Tanwar son of Sabliyan Singh House no. 1247, Sector 64, Faridabad, Haryana Today Police Station- The above application was found to be a cognizable offence due to fraud of a total of Rs. 4 crore 59 lakh 59 thousand today dated 01.08.2024, after which a case was registered from the Manager Cyber Crime Ballabgarh at Police Station Haza, which is also attached with the investigation report dated 30.07.2024 of the Manager Cyber Crime Ballabgarh. On which case no. 465 dated 01.08.2024 under sections 420,467, 468, 471, 120B IPC at Police Station Adarsh



Nagar has been registered and copies of the FIR are being sent to the higher officials and Area Magistrate. After which the copy of the original application has been prepared with the police which will be used for further investigation. DUTY OFFICER AND IO- ASI BHARAT BHUSHAN 2310/FBD, M.N.-9911909929.'

3. **Contentions**

On behalf of the petitioner

The learned counsel for the petitioner has argued that the petitioner is innocent and has been falsely implicated in the present case. It is asserted that the petitioner has no connection to the alleged offence, and that the allegations made in the complaint are baseless and frivolous. The counsel contends that the petitioner has been dragged into the case solely due to being the mother of the accused, Manish. Furthermore, it is argued that the petitioner has neither signed any documents nor been involved in any transaction with the complainant. The counsel also emphasizes that the petitioner is neither a beneficiary nor has she forged or fabricated any document in relation to the offence. Additionally, it is pointed out that there are no call records linking the petitioner to the alleged crime. The counsel further highlights that the alleged incident occurred in 2019, whereas the FIR was filed in 2024, and no satisfactory explanation has been provided for this significant delay. This delay suggests that the FIR is a fabricated and afterthought narrative. It is also submitted that no recovery is to be made from the petitioner, and, therefore, custodial interrogation is not necessary. The petitioner is willing to cooperate with the investigation and join the process. In light of these facts, the learned counsel prays that the present bail petition be allowed.



On behalf of the respondent-State & complainant

The learned State counsel, assisted by the counsel for the complainant, has strongly opposed the petition on the grounds that the petitioner actively participated in the commission of the alleged offence, along with the co-accused, Manish. It was further argued that the petitioner and the other accused were key participants in a criminal conspiracy orchestrated by Manish. During the investigation, it was revealed that the funds received by the accused Manish from the complainant were swiftly transferred to the bank accounts of his father and other family members.

4. Analysis

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

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.”

In the present case, the investigation has established, prima facie, the involvement of the petitioner in a criminal conspiracy orchestrated by her son, the co-accused Manish. The investigation revealed that the petitioner, along with other family members, actively participated in the offence. Specifically, the bank statement demonstrates that the funds received by co-accused Manish from the complainant were swiftly transferred, within one or two days, to the bank accounts of his parents, including the petitioner, and other family members.

Further investigation uncovered that documents, including an appointment letter purportedly issued by Bharat Electronics Ltd. that identified Manish as a scientist, and another letter falsely claiming that he was working as an Assistant on deputation with Shri Ajit Dobhal, NSA, on a secret mission, were fabricated and forged.



Additionally, the petitioner, in criminal conspiracy with Manish, caused wrongful loss to the complainant by depriving him of his hard-earned money. The petitioner assisted the principal accused in deceiving the complainant into investing substantial sums of money in fictitious, large-scale projects. These projects were presented to the complainant only through video calls, with no actual property registration in the name of Manish or his family members.

The offence committed is of a serious nature, involving a significant amount of money.

Even otherwise, the investigation is to be taken to its logical conclusion for which the custodial interrogation of the petitioner is certainly required. Therefore, the petitioner is not entitled to the grant of anticipatory bail and same stands dismissed.

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

11.02.2025

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*