



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

205

CRM-M-14643-2024
DECIDED ON: 27.05.2024

KIRAN BANSAL

... PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

Mr. Dinesh Nagar, Advocate
for the complainant.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 5, dated 05.02.2024, under Sections 420 of the Indian Penal Code, 1860 and Section 13 of Punjab Travel Professionals (Regulation) Act, 2014, registered at Police Station City Banga, Distric SBS Nagar.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

"A complaint No. 1937-PTM dated 06.09.2023, to the SSP, SBS Nagar. Subject: Complaint against Kiran Bansal, Mobile No. 86998-31584, 76966-31584, resident of Green Land School, Railway Road, Near State Bank of India, Banga and Rekha Rani daughter of Sarabjit @ Kala, resident of Village Manguwal, Tehsil Nawanshahr, P.S. Sadar Banga, for committing cheating to the tune of Rs. 24,75,000/- on the pretext of sending abroad and for attempt to kill me. Sir, it is humbly submitted that I, Jatinder Krishan son of Bal Krishan, am resident of Village Manguwal, Tehsil Nawanshahr, P.S. Sadar Banga, District SBS Nagar and submit before you that above said Kiran Bansal, who is running E+IELTS Centre, near Bus Stand Banga, District SBS Nagar, at Taxi Stand, Banga, in the second building, is engaged in the business of sending persons abroad. 2 ½ years ago, a girl of my village, namely, Rekha Rani @ Rajjo daughter of Late Sarabjit @ Kala was working in this E+ILETS center, who is presently working at Nawanshahr. At that time, I had met above said Kiran Bansal, through Rekha Rani and had talked to her about going to Canada. Alongwith me, my brother-in-law (Jijja) Autar Singh resident of Ludhiana and son of my uncle (Chacha) Kamalpreet Singh, resident of Manguwal, also agreed to go to Canada. All three of us met Kiran Bansal in her office. Kiran Bansal assured to send us to Canada on work permit and stated that a sum of Rs. 3 lac per person is to be deposited here as advance and Rs. 16 lac each shall be deducted from our salaries on reaching abroad. Kiran Bansal informed that she had returned from Canada and we would be sent to the company in which she was working. She had a salary of \$ 3500 in that company and also stated that her sister was also in Canada and working alongwith her and her brother was in Australia having Petrol pumps. We trusted her and gave her passports and Rs. 3 lac each in cash and some amount by on-line mode in her office situated at Kandola Building, Banga. Kiran Bansal also got our medical examination done at Chandigarh MAX Hospital and gave us letter of fingerprints and Visa approval letter and later on, sent us the photocopies of the visa granted through whatsapp messages, She told me that Canadian dollars worth Rs. 50000/- were required and we should pay Rs. 50000/- to her for the dollars and we would receive dollars worth Rs. 50000/- immediately on coming out of the Airport. I gave her Rs. 50000/- separately. When I asked Kiran Bansal as to why my finger prints had not been obtained and as to how the Visa had been granted, Kiran Bansal told me that in cases of work permit, the finger prints can be taken either before or afterwards and the finger prints were to be taken by the company and we should only be concerned with going abroad. My friend, who had died, his son Lovepreet Singh

resident of Village Kamha was on frequent visiting terms with me. I told him that my case for going to Canada on work permit had become successful and my medical examination had also been done. Lovepreet Singh asked me to talk to my agent and file his case also. I talked to Kiran Bansal, who asked me to provide his passport also so that he could be granted visa alongwith us. Lovepreet Singh gave his passport and Rs. 3 lac to Kiran Bansal. Lovepreet Singh was given a copy of the visa by Kiran Bansal and stated that his flight was scheduled on 22.08.2023. Lovepreet Singh further spoke with his nears and dears about going to Canada. Out of them, Varinder Kumar resident of Kahma, Jasbir Lal and Jasbir residents of Village Bhootan, also gave their copies and Rs. 3 lac each. Jasvir Lal and Jasbir also gave the passport of her sister Amandeep Kaur and a relative from Phagwara, namely, Kirandeep to Kiran Bansal and a sum of Rs. 3,25,000/- was paid to Kiran Bansal and no money was paid in the case of Amandeep Kaur. Not only this, my another relative had a talk for going to Portugal for a consideration of Rs. 7,50,000/- and Rs. 1 lac was paid to her as advance. Kiran Bansal neither sent him to Portugal nor returned his money. I returned his Rs. 1 lac at Police Station City Banga and a compromise was affected between us. When I got my visa verified, I came to know that this visa is fake. I also got verified the visas of others. In this way, Kiran Bansal allured us and took a total sum of Rs. 24,75,000/- fraudulently. When I asked her about the fake visa, she started making excuses. I asked her to return our amount in the same manner as she had accepted the said amount. She asked for some time. After few days, she gave me a cheque in the sum of Rs. 1,50,000/- bearing cheque no. 675287 drawn on Punjab National Bank and another cheque of Rs. 50000/- bearing cheque No. 000045, drawn on Bank of Baroda, which have already been dishonoured. She had asked for time to return the amount on 05.09.2023, but when I went to take the money, she started hurling abuses at me. She threatened me that I may do as I like and she would not return any money. She threatened to kill me and our passports are also with Kiran Bansal. Now we came to know that Kiran Bansal had committed cheating with people in the year 2012 also and she had also gone to jail in 2012. She has committed cheating with other persons like us. In this manner, above said Kiran Bansal has committed cheating of Rs. 24,75,000/- with us and she has not returned any money to any person. We are also in possession of the records and the copies of the fake visas. Therefore, my companions are harassing me for return of money and Kiran Bansal is not listening to us. Therefore, strict action be taken against Kiran Bansal and her accomplices and our money be got returned and my life and property be protected. I shall be

*highly thankful to you. Yours faithfully, Sd/ - Jatinder Krishan
resident of Village Manguwal, Nawanshahr, District SBS Nagar.
Mobile NO. 98764-61057 dated 06.09.2023."*

3. It has been contended by learned counsel for the petitioner that she took a friendly loan to the tune of Rs.2,80,000/- from the complainant and in lieu thereof, she has issued two post dated cheques in favour of the complainant. The submission is that even the petitioner had returned part of the loan amount, but the complainant had refused to return the cheques, rather, moved a false complaint against the petitioner by concocting a false story.

4. Mr. Rajiv Verma, DAG, Punjab, has vehemently opposed the prayer made in the present petition stating that the petitioner does not deserve the concession of pre-arrest bail, as she is involved in various other cases of similar nature, meaning thereby, she is not a person of clean antecedents. He asserts that the custodial interrogation of the petitioner is required to unearth the dimensions of the trade. Hence, anticipatory bail not be granted to him.

5. Heard learned counsel for the respective parties.

6. 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.

7. It would be appetite to reproduce the order dated 21.03.2024 passed by this Court whereby, the petitioner was granted the interim bail, which reads thus:-

“ The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in FIR No.5, dated 05.02.2024, under Section 420 of IPC, 1860 and

Section 13 of Punjab Travel Professionals (Regulation) Act, 2014, registered at Police Station City Banga, District SBS Nagar.

Learned counsel for the petitioner contends that the dispute between the complainant and the petitioner revolves around for an amount of Rs.2,80,000/-, which is alleged to have been given by the complainant to the petitioner. He submits that out of the aforesaid amount, Rs.40,000/- has been returned to the complainant on 05.06.2023 via Paytm and out of remaining amount Rs.1,00,000/- will be given to the complainant by way of demand draft within two days from today. He further informs the Court that the petitioner is ready and willing to return the whole amount.

Notice of motion.

On the asking of Court, Mr. Rajiv Verma, DAG Punjab accepts notice on behalf of respondent-State, who on instructions from ASI Mohinder Pal informs the Court that petitioner is involved in 12 other FIRs of similar nature and, therefore, being a habitual offender does not deserve the concession of anticipatory bail.

Keeping in view the undertaking given before this Court that the petitioner is ready and willing to return the whole amount, which was given by the complainant, the custodial interrogation of the petitioner may not be necessary at this stage, therefore, he is directed to be released on interim bail in case he joins the investigation on furnishing personal surety/security bonds to the satisfaction of Arresting Officer/Investigating Officer. The petitioner will also come present as and when called for and cooperate in investigation and shall abide by the conditions as envisaged under Section 438 (2) Cr.P.C.

Adjourned to 13.05.2024.”

8. From the afore-said order, it is evident that the petitioner was granted the interim relief only keeping in view the undertaking given before this Court that she will return the whole amount, as given by the complainant. On 13.05.2024, this Court was informed by learned State counsel that the petitioner has failed to turn up to join the investigation. However, today, on instruction from ASI Mohinder Pal, learned State counsel has submitted that though the petitioner has joined the investigation but the amount as undertaken by her before this Court on 21.03.2024 has not been paid to the complainant, so far.

9. The antecedents of the petitioner are also not good, as she is already involved in 12 other cases of similar nature. The Apex Court in case **“Gudikanti Narasimhulu vs. Public Prosecutor, High Court of A.P.”; (1978) 1 SCC 240**, has already observed that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

10. 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 ensconced 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.”

11. In view of the afore-said facts and circumstances coupled with the facts that the petitioner has been specifically named in the FIR by the

complainant with the specific allegations that he was duped to the tune of Rs.24,75,000/- on the pretext of sending him along-with his brother-in-law (Jija) namely Avtar Singh and son of his uncle (Chacha) namely Kamalpreet Singh abroad and is also involved in the other similar cases, this Court is of the considered view that she does not deserve concession of anticipatory bail at this stage especially when investigation is still going on.

12 Needless to say, such type of cheating, duping and fraud is rampant in our society and is often adopted by fraudsters and unscrupulous persons on pretext of sending innocent people abroad and thereby duping them. This has become a cakewalk to amass wealth illegally overnight which needs to be curbed with an iron hand to save the innocent people.

13. Keeping in view the increasing incidents of human trafficking in the region insofar as cunning and manipulative persons take advantage of the simplicity and lack of understanding amongst regular persons, who are eager to pay any amount to migrate overseas in quest of greener pastures. A considerable number of these individuals perish while being transported across rivers, seas, woods, and borders. Many of these people are detained by the local police, forced to serve lengthy prison sentences, and frequently have their immigration status revoked. Travel agencies are proliferating, even in the most distant areas of the State of Punjab. Most of these travel agents don't have legitimate permits to send customers. The allegations against the petitioner in this case are quite serious and grave, which require custodial interrogation to find out as to how the scam was planned and executed. The recovery of the money said to have been paid by the complainant as well as other documents given by him to the petitioner is to be effected. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose

ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

14. Hence, no case for grant of pre-arrest bail to either of the petitioner is made out.

15. Dismissed.

27.05.2024
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(SANDEEP MOUDGIL)
JUDGE

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