

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M-23542 of 2015
Date of decision : 04.08.2015**

Gourav @ Gaurav James

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. B.S. Guliani, Advocate
for the petitioner.

Mr. V.P.S. Sidhu, AAG, Punjab.

Mr. P.S. Ahliwalia, Advocate
for the complainant.

ANITA CHAUDHRY, J(ORAL)

The petitioner is seeking anticipatory bail in FIR No. 131 dated 15.05.2015, registered under Section 420 IPC, Police Station Division No.5, District Ludhiana.

A complaint was given by James, resident of District Kapurthala that he had applied for a post of Constable at Phillaur, where he met the petitioner earlier known to him. He offered to introduce him (petitioner) to another person who could get his work done. The allegations are that the petitioner took Rs.1,05,000/- as advance for getting the work done. The payment was made in the presence of Kewal Masih. The work was not done instead a sum of

Rs.40,000/- more was demanded. The FIR was registered in May, 2015.

The counsel for the petitioner contends that the Court below had wrongly dismissed his application. He urges that the mobile number written in the complaint is not of the accused and the police had not investigated on this account and are not recording the statements of the persons who were connected. He urges that the Court below had noted that there were more FIRs but those complaints were made by Malik and civil litigation is going with respect to the Management of the Church and in all the cases, anticipatory bail has been allowed to him. It was urged that Malik is getting cases registered as he is influential and the observations made by the High Court in CRM No.1400 of 2015 decided on 19.01.2015 would show how the administration was acting. He urges that the bonds offered by the brother of the petitioner were not accepted and therefore, the Court had recorded its disapproval. It was contended that the true facts were that the complainant had taken a loan of Rs.2 lacs with a promise to return the same in February, 2015 and it was not repaid and immediately after February, the FIR was got registered with a view to pressurize the petitioner. It was urged that Kewal Masih has given an affidavit in his favour.

The bail petition is opposed by the complainant as well as the State and it has been urged that in the earlier petition titled as Sandhya James Vs. State of Punjab, the affidavit given by the petitioner dated 05.12.2014 is attached, in which the petitioner had

given the same mobile number as is mentioned in the FIR. It was urged that information under RTI Act was collected and this mobile number is that of the petitioner. It was contended that the matter does not relate to Ludhiana District and the complainant is a resident of Kapurthala and the complaint was given to SSP, Kapurthala and the word Kapurthala is missing from Annexure P-1. He urges that the matter was inquired by SSP, Kapurthala and since it was found that the amount was paid at Ludhiana, therefore, it was transferred and the FIR was registered after one and a half year.

The Counsel further submit that this mobile number is not being used for the last three months and they have a recording in which Rs.40,000/- more were demanded. It was contended that the complaint had been given to the police in January, 2014 and loan could not have been taken in September, 2014 and the receipt presented by the petitioner, is not signed by the complainant. It was also urged that there was three more FIRs against the petitioner in which allegations of cheating have been levelled.

The vernacular of the FIR was shown at the time of the submissions and I find that Annexure P-1 is not the correct translation and the complaint had been made to SSP, Kapurthala and the words Kapurthala intentionally or otherwise have been omitted. The complaint had been made in January, 2014. The police has a recorded conversation made from the mobile phone. In a petition filed by the mother of the petitioner, the mobile phone used by the petitioner was referred in the representation and a copy thereof was

attached in the earlier petition. Therefore, for them to now deny that this mobile number was not of the petitioner, appears to be incorrect.

Section 438 Cr.P.C. is an extra ordinary remedy and protection can be granted only considering the material and the facts of a given case. The allegations against the petitioner are grave. Custodial interrogation is necessary. It would be difficult to carry out the investigation and it is necessary to curtail his freedom to enable the Investigators to proceed. No fetters can be placed upon the Investigators.

The petition is dismissed.

04.08.2015
sunil

(ANITA CHAUDHRY)
JUDGE