

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

**Crl. Misc. No.M- 35635 of 2015 (O&M)
Date of decision : 16.11.2015**

Vivek Makkar and another

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepak Girotra, Advocate
for the petitioners.

Mr. G.S. Salwara, DAG, Haryana.

Mr. Jaininder Saini, Advocate
for the complainant.

ANITA CHAUDHRY, J.

This is a petition filed under Section 438 Cr.P.C. whereby the petitioners seeks setting aside of the condition imposed by the Additional Sessions Judge, Hisar. The petitioners have been directed to deposit Rs.12 lacs or exact amount deposited by the complainant in their bank accounts in the Court. Liberty was given to the Court to either release the amount to the complainant or get the FDR made and leaving the question to be decided during trial.

I have heard learned counsel for both the sides.

The counsel for the petitioners contends that mediations were held where the petitioners had stated that they were ready to deposit Rs.12 lacs if the entire issue was settled but the compromise was not effected and as the matter could not be settled they had approached the Court for anticipatory bail and while allowing their application, they have been directed to deposit Rs.12 lacs with further direction that the amount would be paid to the complainant. It was urged that if it is a case of final settlement then they were ready and they had made no such submission before the Court hearing the bail plea.

The complainant side has also appeared and opposes the prayer. It was urged that the complainant side during the course of mediation had asked for Rs.27 lacs as that was the amount that was paid and over Rs.12 lacs was deposited in the account of the petitioners. It was urged that anticipatory bail had been allowed to the petitioners only because they had offered to deposit that amount and they had taken the benefit of anticipatory bail and were now backing out and they were bound to deposit the amount and the period of deposit has expired and the order was made conditional and the application would, therefore, be deemed to be dismissed.

Both the sides have made allegations and counter allegations. It is not disputed that the parties were referred for mediation and this fact is recorded in the order of the Court below. It is necessary to notice the submissions made on behalf of the petitioners made before the lower Court which are contained in paragraph no.4 of the order which reads as under:-

"Learned counsel for applicants-accused submitted that applicants-accused have been falsely involved in the case. Applicants are prepared to return money deposited by complainant in their bank accounts. Case of complainant is based on documents. Applicants undertakes to abide by all terms and conditions of bail. Therefore, application may be allowed."

The above would clearly show that the petitioners had offered to return the amount deposited by the complainant in their bank account.

The State counsel had submitted that the bank statement was available with them. It is not disputed that the complainant had deposited a sum of over Rs.12 lacs in the account of the petitioners and it is only the offer to return the amount that the Court was inclined to grant anticipatory bail. Paragraph no.6 of the order reads as under:-

"From examination of record in light of aforesaid rival contention, it is crystal clear that applicants-accused are prepared to return the various amount deposited by complainant in their bank accounts. The case of complainant is based on documents. In view of above material facts and facts and circumstances of the case, first anticipatory bail application of applicants-accused is allowed subject to following conditions:-

(a) that applicants-accused shall be released on bail by the arresting officer on furnishing personal bond in the sum of Rs.20,000/- each with one surety each in like amount. The applicants-accused shall made themselves available for interrogation by a police officer as and when required.

(b) that applicants-accused shall not directly or indirectly made 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.

(c) that applicants-accused shall not leave the country without prior permission of the Court.

(d) that the applicants-accused will maintain good conduct during trial and shall attend Court regularly.

(e) without prejudice to merits and demerits of case either of the parties initially applicants shall deposit Rs.12 lacs or exact total amount deposited by complainant in their bank accounts in the Court, Court will either release the amount to complainant or get FDR from Indian Post Office or Nationalized Bank with maximum interest and will decide about the amout during trial."

The above would reveal that the Court was inclined to grant anticipatory bail to the petitioner only when they were prepared to return the amount deposited in their account. The petitioners are now backing out of the offer they had made before the Court below. The circumstances would have been different had that statement not being made there. Therefore, condition 6(e) regarding deposit cannot be modified. However, some modification is necessary as the rights of the parties are yet to be adjudicated but the amount shall be deposited in the Court within a fortnight. The Court would get the same invested in the FDR fetching higher interest. The FDR would remain with the trial Court till the conclusion of the trial. If the condition is not complied within the time framed above, the application filed by the petitioners shall be deemed to be dismissed.

16.11.2015

sunil

(ANITA CHAUDHRY)
JUDGE