

S.No.202

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

CRM-M-25595 of 2018 (O&M)

Date of Decision:05.09.2018

Amrit Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. H.P.S. Ghuman, Advocate
for the petitioner.

Mr. Hittan Nehra, Addl. AG,
Punjab.

Mr. Shakti Mehta, Advocate
for the complainant.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.0104 dated 18.05.2018 registered under Section 420 IPC and Section 13 of Punjab Prevention of Human Smuggling Act, 2012 at Police Station Patran, District Patiala.

Vide interim order dated 12.06.2018, the petitioner was granted interim protection with a direction to join the investigation as and when required by the Investigating Officer.

However, earlier this Court was informed that the petitioner was requisitioned by the Investigating Officer to join the investigation on 25.08.2018. But, the petitioner had not joined the investigation, as required by the Police.

On 27th August, 2018, the case was again taken up by this

Court. The interim order was continued in favour of the petitioner to enable

him to join the investigation. On 27.08.2018, counsel for the petitioner had also submitted that out of the money received from the complainant, some of the money was deposited in the account of one Charanpreet Singh who is a travel agent. The remaining amount was given in cash to Charanpreet Singh. However, the counsel had failed to point out any receipt for having given the same to Charanpreet Singh. In view of this, counsel had sought time to seek instructions from the petitioner whether he would like to return the money taken from the complainant, minus the amount deposited in the account of the above said Charanpreet Singh.

Today, again, the State Counsel has informed the Court that the petitioner was again called for joining the investigation on 3.09.2018. However, again the petitioner had not come present to join the investigation.

Counsel for the petitioner has also pointed out that he has instructions from the client to submit that he is not ready to return any amount and that this cannot be made a ground for declining anticipatory bail. It is further submitted that the amount already stands handed over to Charanpreet Singh. Therefore, the petitioner is not having any amount, which is alleged by the complainant, to have been paid to the present petitioner.

Counsel for the petitioner has relied upon judgments of Hon'ble the Supreme Court and other Courts rendered in **Sheikh Ayub v. State of M.P., 2006(2) R.C.R. (Criminal) 63; Shyam Singh v. State Th. C.B.I., 2006(2) SCC (Cri) 613; Amarjit Singh v. State of NCT of Delhi, 2002(2) R.C.R. (Criminal) 543; Sandeep Jain v. National Capital Territory of Delhi rep. by Secretary, Home Deptt., 2000(1) R.C.R. (Criminal) 517;**

M. Sreenivasulu Reddy v. State of Tamil Nadu, 2001(2) Crimes 230;

M.R. Narayanan v. State, 2003(2) R.C.R. (Criminal) 81 and Raj Kumar

Aggarwal v. Director General Central Excise New Delhi and another,

2008(147) DLT 1, to contend that the High Court cannot be made a recovery forum in the matter of a criminal case. Therefore, this Court could not have directed the petitioner to pay the money to the complainant as a condition; for releasing the petitioner for granting him the benefit of anticipatory bail.

Having heard learned counsel for the parties, this Court is of the considered opinion that the petitioner has chosen not to avail the opportunities granted to him to join the investigation. Twice, he was granted opportunity to join the investigation. However, the Police file shows that despite repeated requisition by the Police, the petitioner has not presented himself before the Investigating Officer to join the investigation. Although the explanation given by counsel for the petitioner, for non-joining the investigation, is that the Police was threatening the petitioner that the moment he joins the investigation, he will be arrested, however, it is beyond understanding as to how this argument could be advanced; when the petitioner was having a positive order of not being kept in custody by the Police; if he joins the investigation.

This Court has never made the payment of the amount to the complainant as a condition for grant of benefit of anticipatory bail to the petitioner. Interim order in his favour was ordered to be continued so that the petitioner could join investigation.

On the previous date, it was the assertion of counsel for the

petitioner himself that some of the money received by the petitioner from the complainant stands deposited in the account of co-accused Charanpreet Singh. This assertion itself shows that the petitioner has, in fact, received the money from the complainant, as alleged in the FIR. Moreover, the document placed on record by the petitioner himself, i.e. Annexure P.4, shows that the money was received by the petitioner under an agreement between the parties, to send the complainant to Bahrain. Having executed a document showing receipt of the money, and having positively asserted that part of the money was deposited in the account of the co-accused, it would be too much for the petitioner to turn around and start saying that he cannot be asked to make the payment of the money to the complainant as a condition for grant of anticipatory bail. This, rather, reflects the clever disposition of the petitioner. Judgments relied upon by the counsel are clearly distinguishable on the peculiar facts of this case. The Hon'ble Supreme Court through its Large Bench, in case of **2002 RCR (Civil) 373, Padmasundara Rao (Dead) v. State of T.N and others**, has categorically held that Court should not place reliance upon a judgment without discussing the facts situation of the judgments relied upon. The relevant para of the judgment is reproduced hereunder:-

“Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered the judicial utterances are made in the setting of

the facts of a particular case, said Lord Morris in **Herrington v. British Railways Board, 1972(2) WLR 537**. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

A perusal of the judgments relied upon by the counsel for the petitioner show that these judgments had their peculiar facts, having nothing even near to the facts of the present case. Rather in case of **M. Sreenivasulu Reddy's case (supra)**, the Hon'ble Supreme Court specifically refused to quash the condition of depositing amount for grant of anticipatory bail, because it was own undertaking of the petitioner. So, these judgments are of no help to the case of the petitioner. The power to release a person on anticipatory bail is an extra-ordinary power, which to some extent, puts a clog upon the right of the Police to investigate a case to its full extent. So while passing order of release of accused on anticipatory bail, the Court also has to balance the equities between the liberty of accused and grievance of the complainant. So if in a case, like the present one, where the accused admits the receipt of money from the complainant or the same is made otherwise obvious by transactions like RTGS or the cheque payments, and such receipt of money is not claimed by the accused to be a validly received consideration for some legal purpose, then the Court can very well seek an undertaking from the accused to deposit some amount to show his bonafide or purity of intentions. Otherwise, it could be inequitable on the part of the Court to exercise its extra-ordinary power in favour of the accused, and to grant him pre-arrest bail, which the accused cannot otherwise claim it as a matter of right.

In any case, this Court is not taking into consideration the factum that the petitioner has not come forward to make the payment to the complainant; despite submitting that some of the money received from the complainant stands deposited in the account of Charanpreet Singh. The fact remains that the petitioner was granted opportunity to join the investigation twice. The police has come up with a positive assertion that the petitioner has not joined the investigation despite being granted interim protection against arrest.

Today again, counsel for the petitioner has submitted that he shall join the investigation if he be granted another opportunity to join the investigation under the direction of this Court, by giving a particular date for appearance before the Investigating Officer. However, as an accused, the petitioner cannot choose the relief and at the same time, defy the order of the Court, as per his choice. Seeing the conduct of the petitioner in not joining the investigation; despite being granted interim protection twice, the Court does not find any ground to prevent the Police from investigating the case by taking the petitioner in custody.

Otherwise also, the anticipatory bail being extra-ordinary remedy cannot be claimed as of routine and as a matter of right. It is well established that the investigation of a person is qualitatively and quantitatively different when the petitioner joins the investigation under the protective umbrella of the order of the Court; than the investigation which is conducted by the Police by taking an accused in custody.

Dismissed.

September 05, 2018

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(RAJBIR SEHRAWAT)

JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No