

**S.No.104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-32415 of 2018 (O&M)
Date of Decision:01.08.2018**

Naib Kaur Petitioner

Vs.

State of Haryana Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Mohinder Singh Joshi, Advocate
 for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is the second application filed by the petitioner seeking anticipatory bail. The first application seeking anticipatory bail was dismissed as withdrawn qua the present petitioner; since the counsel for the petitioner had submitted that he did not wish to press the petition qua the petitioner so as to avail the remedy of regular bail by her. Accordingly, vide order dated 24.07.2018, the son of the petitioner, who was petitioner No.2 in that case, was granted concession of anticipatory bail; since the FIR had not named him as a person who had received any money in cash and further that the bank transaction had not shown his prima-facie involvement in the case. But the application qua the present petitioner, who was petitioner No.1 in that petition was dismissed as withdrawn, as mentioned above.

Now by changing the counsel, the petitioner has filed the second application for anticipatory bail just within three days. Counsel submits that the petitioner had not instructed her previous counsel to withdraw the petition on her behalf. Therefore, she has availed remedy of filing the present application in the same case, again.

Arguing the case, counsel for the petitioner has submitted that the petitioner is an illiterate, old and a domestic lady. She cannot read and write; except to put her signatures in Punjabi. Therefore, there is no possibility of the petitioner being involved in a case. Counsel further submits that the petitioner was already made to join in an inquiry related to this very incident; which was conducted by Crime Branch, Ambala. In that inquiry, while being examined, the present petitioner had disclosed to the Inquiry Officer that money received by her was handed over to the Agent Rakesh Kumar; who had purchased the tickets for the son of the complainant. So it is Rakesh Kumar who had committed this crime, not the petitioner. The next argument of the learned counsel for the petitioner is that she has been wrongly involved in the case because the complainant is having property dispute with brother of the present petitioner, namely, Naib Singh and another brother of the petitioner, namely, Ajaib Singh is still working with the complainant as a labourer. Further, counsel submits that the petitioner is ready and willing to join the investigation. In the end, counsel has submitted that, in fact, the Investigating Officer knows everything and he need not to arrest the petitioner at all. Still further it is submitted that the conduct of the complainant; in compromising the dispute with other agent Lovish Kumar; also reflects upon the character of the complainant that he can go to the extent of blackmailing the present petitioner. Hence, prayer is made for grant of anticipatory bail.

However, having heard learned counsel for the petitioner, this Court finds that the petitioner is only trying to overreach the process of the Court by levelling false allegations against her earlier counsel, only to

create a ground for filing the present petition. The earlier counsel had no ill-will against the present petitioner; no any such allegation is levelled by the petitioner. It was the same counsel who argued the case to secure anticipatory bail to the son of the petitioner. That counsel had no reason or occasion to act against the instructions of the petitioner.

The argument raised by the counsel for the petitioner today that the petitioner is an old illiterate and domestic lady, therefore, she cannot even think of participating in activities of sending the persons abroad is rebutted by his second argument itself; wherein it is submitted by the counsel that while making statement before Crime Branch, Ambala, the petitioner had stated that she had received the money but handed over the same to the Travel Agent Rakesh Kumar. This clarifies the fact that the petitioner is not a domestic lady only, not having anything to do with sending people abroad. This argument of the counsel for the petitioner itself shows that the petitioner is herself admitting involvement in the present incident as well; by admitting that she had received the money, though her claim is that the money was further transferred to the Travel Agent Rakesh Kumar.

The argument of the learned counsel for the petitioner that the complainant is trying to involve the petitioner wrongly; because the complainant is having property dispute with the brother of the petitioner Naib Singh and another brother of the petitioner is serving as Labourer with the complainant is also without any substance. Rather this proximity of the complainant can be a reason for the complainant to repose faith in the petitioner and to make the payment of the money; which has even been

admitted by the petitioner. Hence, this argument is also not only irrelevant, rather goes against the petitioner herself.

Lastly, the argument of learned counsel for the petitioner that since the Investigating Officer knows every fact about the case, therefore, the petitioner need not be arrested, is totally alien to the criminal procedure. Merely because the Investigating Officer is in the knowledge of a set of facts is not sufficient; either for filing of a challan against a person or for prosecuting a person for the offence committed by him. It is the evidence, in collection of which the Investigating Officer may utilise his personal knowledge as well; that a person can be prosecuted and punished. So this is not a ground to avoid the arrest of a person by Investigating Officer.

In view of the above facts, the petitioner herself has created a gamut of facts which necessitates her custodial interrogation. Her husband is residing in France. There is specific allegation against the petitioner, by name, that she received money in this case. The petitioner has herself stated to have received the money and handed over the same to the agent Rakesh Kumar, as submitted by learned counsel for the petitioner in his arguments. Admittedly, the son of the complainant was sent to Moscow, although the assurance given to him was for sending him to France. All this chain of events need to be deeply probed into, so as to unearth the truth about the present case as well as other similar cases in which the present petitioner might be involved, as is mentioned in the FIR as having been so stated by the petitioner herself. In any case, the entire trail and movement of the money in this case is yet to be dug out by the Police.

Needless to say that the custodial interrogation is qualitatively

and quantitatively different than the investigation conducted by the Police when the accused is under the protective umbrella of a protection ordered by the Court. Hon'ble the Supreme Court has repeatedly held to this effect. Moreover, the anticipatory bail cannot be claimed as a matter of right. In the present case, the petitioner has not made out any extra-ordinary and exceptional circumstance so as to grant her the benefit of anticipatory bail. Therefore, the learned Courts below have not committed any mistake while declining the anticipatory bail to the petitioner. Rather this is the requisite order to be passed, so as to enable the Police to properly investigate the case.

Dismissed.

August 01, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No