

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

CRM-M No. 41317 of 2017 (O&M)

Date of decision : 31.10.2018

Shaminder Kaur

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. P.S. Ahluwalia, Advocate for the petitioner.
 Mr. C. L. Pawar, Senior DAG, Punjab.
 Mr. Ranjan Lakhanpal, Advocate for the complainant.

* * *

DAYA CHAUDHARY, J.

Petitioner Shaminder Kaur has approached this Court by way of filing the present petition under Section 438 of the Criminal Procedure Code, 1973 for releasing her on anticipatory bail in case FIR No.14 dated 12.03.2017 under Sections 420 and 120-B of the Indian Penal Code, 1860, registered at Police Station - Chohla Sahib, Distt. Tarn Taran.

Said FIR was registered on the basis of the complaint made by complainant Swaran Singh alleging therein that the present petitioner along with others cheated him to the extent of ₹ 13,53,000/- on the pretext of settling his son and daughter-in-law in Canada. A preliminary inquiry was conducted by the investigating agency, wherein it was found that complainant was cheated to the extent of ₹ 6,33,000/- only.

Learned counsel for the petitioner submits that the FIR was registered after an unexplained delay of more than 15 years. As per allegations, the complainant himself has stated that he was introduced by the petitioner to part with money for sending his son and daughter-in-law abroad way back in the year 2002. The payments were made from the year 2002 to 2014. Learned counsel further submits that all family members of the petitioner have been implicated in the case. A complaint was also made to Human Rights Commission, Punjab by the nephew of the complainant, which was inquired into by the police of S.A.S. Nagar (Mohali) and a report was submitted on 07.10.2013 (Annexure P-3). Learned counsel also submits that on the basis of same allegations, six FIRs were registered against the husband of the petitioner and out of which, four FIRs were registered in Distt. Tarn Taran, where the complainant party was residing. Learned counsel further submits that the petitioner has been declared proclaimed offender in spite of interim protection granted by this Court in her favour and subsequently the order of declaring of PO was recalled as it was passed by concealing certain material facts. Learned counsel also submits that as per statement of ASI Sukhdev Singh, which was recorded by learned C.J.M., Tarn Taran on 03.02.2018, it was clear that the petitioner had already joined investigation on 08.11.2017.

The request of anticipatory bail has been opposed on the ground that there is possibility that the petitioner may leave the country without permission of the Court. She may also hamper with the investigation. It has also been submitted that though the petitioner has

joined investigation but she has not cooperated with the investigating agency and the amount has not been recovered.

Notice of motion was issued in the case on 02.11.2017 and interim protection was also granted to the petitioner with direction to join investigation. Thereafter, the case was adjourned on various dates.

Reply has been filed by the State, which is on record. It has been mentioned in the reply that the FIR was registered against the petitioner and three other accused namely Gurjit Singh, Major Singh and Angrej Singh. Gurjit Singh is husband of the petitioner and Major Singh is the father-in-law of the petitioner. It has also been mentioned that the petitioner is habitual offender as total four FIRs have been registered against her. Out of these FIRs, one FIR No.81 dated 28.04.2018 has been registered under Sections 420, 467, 468, 471, 120-B IPC at Police Station - Patti City, Distt. Tarn Taran against the petitioner regarding filing of wrong affidavit by forging the signatures of her father-in-law Major Singh. It has also been mentioned in the reply that the petitioner has cheated the complainant and misappropriated an amount of ₹13,53,000/- on pretext of sending his son and daughter-in-law to Canada.

During pendency of the petition, the petitioner moved an application *i.e.* CRM No.36950 of 2018 for placing on record Annexures P-5 to P-9 mentioning therein certain facts.

As per order passed by the trial Court, it was mentioned that challan has been presented against the petitioner and the petitioner was not appearing before trial Court, whereas name of the petitioner was mentioned

in Column No.2 of the final report and challan was presented qua to her husband namely Gurjit Singh only. In order dated 30.05.2018, the trial Court has observed that non-bailable warrants of the petitioner along with Major Singh and Angrej Singh were received back with the report that their houses were found locked, whereas Major Singh had already died on 28.02.2018. Meaning thereby, a wrong order was passed by mentioning that challan has been presented against the petitioner, whereas name of the petitioner was kept in column No.2 and no challan was presented qua her. There was no reason for the petitioner to appear before the trial Court when challan was not presented against her. It is also apparent that petitioner was wrongly declared proclaimed offender whereas interim order was passed in her favour in the anticipatory bail petition filed before this Court. The trial Court initiated PO proceedings against the person, who had already expired.

The relevant *zimni* orders passed by the trial Court are reproduced as under:-

“Present : Assistant Sub-Inspector Kuldeep Singh.

Non-bailable warrant of arrest of accused received back with the report that her house was found locked. I am satisfied that the presence of accused cannot be procured in the ordinary manner as he is trying to avoid appearance in the Court. Be summoned through proclamation under Section(s) 82(1) Criminal Procedure Code, returnable by 21.12.2017. His properties are also ordered to be attached under Section(s) 83 Criminal Procedure Code. Copy of this order be forwarded to concerned Collector, for attachment of his properties in accordance with Punjab Land Revenue Act, 1887.

*Sumit Bhalla (UID-PB0259)
Chief Judicial Magistrate,
Tarn Taran-03.11.2017.”*

“Present : Sh. IPS Sandhu, Additional Public Prosecutor.

Proclamation of accused Shaminder Kaur received back duly published. Statement of Head Constable Jaswant Singh has been recorded. Since the proclamation was published on 12.12.2017, therefore, the presence of accused be awaited for 15.01.2018.

*Sumit Bhalla (UID-PB0259)
Chief Judicial Magistrate,
Tarn Taran-21.12.2017.”*

*“Present : Sh. IPS Sandhu, Additional Public Prosecutor.
Accused proclaimed person.*

The mandatory period of 30 days stood expire but the accused Shaminder Kaur preferred not to turn up in the Court in accordance with the proclamation despite repeated calls of the case. Accordingly, the accused is declared Proclaimed Person in terms of Section 82(1) Criminal Procedure Code. His properties are ordered to be attached under Section(s) 83 Criminal Procedure Code. Copy of this order be forwarded to Station House Officer, Police Station Sadar, Tarn Taran for registration of FIR against the accused Shaminder Kaur under Section(s) 174-A of Indian Penal Code. Copy of this order be also forwarded to the Station House Officer Police Station Chohla Sahib for making an entry in the relevant register of Proclaimed Offenders. File be consigned to the record room and be put up as and when the challan is presented.

Pronounced in the open Court on:

January 15th 2018

*G.S.
Stenographer-III*

*Sumit Bhalla
Chief Judicial Magistrate,
Tarn Taran UID-PB0259”*

“Present : Ms. Satinder Pal Sokhi, Advocate for accused/applicant.

File taken up today on the application filed by the accused/applicant Saminder Kaur for recalling the order of proclamation on the ground that she was granted bail by the Honourable High Court. In view thereof, issue notice to the Additional Public Prosecutor as well the Station House Officer

Police Station Chohla Sahib for 03.02.2018.

*Sumit Bhalla (UID-PB0259)
Chief Judicial Magistrate,
Tarn Taran-18.01.2017.”*

*“Present : Sh. IPS Sandhu, Additional Public Prosecutor with
Investigating Officer.*

In pursuance to the notice, the Investigating Officer of the case, namely, Assistant Sub-Inspector Sukhdev Singh No.265/TT appeared and suffered a statement that since he was not aware about interim bail granted to the accused by the Honourable High Court and he had intimated this fact to the serving Head Constable Jaswant Singh No.585/TT, therefore, he could not brought this fact to the knowledge of this Court. After going through the statement suffered by the Investigating Officer, I found the same not satisfactory. His conduct is deprecated and copy of this order is ordered to be sent to the Senior Superintendent of Police, Tarn Taran for taking appropriate proceedings against him for being negligent while performing his official duties and for misleading the Court and obtaining favourable orders.

Since the accused Shaminder Kaur was already granted anticipatory bail by the time she was declared Proclaimed Person by this Court, therefore, in view of that eventuality, the order of declaring her Proclaimed Person is not void ab-initio and is liable to be recalled. Accordingly, the order dated 15.01.2018 is hereby, recalled whereby the accused Shaminder Kaur was declared Proclaimed Person. The application of the Investigating Agency is also dismissed. Report be separately forwarded to the Honourable High Court for intimation where the bail application, bearing No.CRM-M-41317 of 2017 is pending. Papers be attached with the FIR and put up as and when the challan is presented.

*Pronounced in the open Court on:
February 03rd 2018
G.S Stenographer-II*

*Sumit Bhalla
Chief Judicial Magistrate,
Tarn Taran UID-PB0259”*

A perusal of aforesaid *zimni* orders shows that non-bailable warrants of arrest of accused persons received back with the report that their houses were found locked. By mentioning that presence of accused could not be procured in ordinary course and the accused was avoiding appearance in the Court, order of summoning him through proclamation under Section 82(1) Cr.P.C. was passed. There was an order of attachment of his property as well.

Report from the trial Court was sought and same was sent vide letter dated 19.06.2018, wherein it has been mentioned that the SHO concerned was called for verification of the order and he made a statement in the Court on 03.02.2018 stating that he was not having any knowledge with regard to grant of anticipatory bail to the petitioner by the High Court. It has also been mentioned that Additional Public Prosecutor failed to assist the Court in this regard and did not bring the fact to the knowledge of the Court that accused has already been granted interim bail. Further it has been mentioned that inadvertently the report could not be forwarded to this Court as papers remained struck with other file of co-accused Gurjit Singh, the husband of petitioner Shaminder Kaur by the Ahlmad. It has further been mentioned that accused Shaminder Kaur had already been summoned as an accused vide order dated 18.05.2018 in the main challan submitted against her husband Gurjit Singh, but she did not appear and thereafter, vide order dated 30.05.2018 accused Shaminder Kaur was again summoned through proclamation as her house was found to be locked. Shaminder Kaur despite having knowledge of trial pending against her, has not only delayed the

proceedings of the trial by not appearing but has misrepresented the facts before this Court. It is also mentioned that challan against accused person had already been presented on 12.08.2017 but despite granting interim bail by High Court, she did not appear in the Court. It has also been submitted that challan was not only presented against her but against her husband who is in custody and she is delaying the trial of her husband as well.

On perusal of report, it is apparent that not only wrong facts have been mentioned but every efforts have been made to mislead this Court by sending wrong report. The concerned Judicial Officer is not well versed with the provisions of law as the orders have been passed contrary to the facts. He has remained very casual during proceedings. He is directed to be careful in future. Interim order dated 02.11.2017 passed in favour of the petitioner is made absolute.

Copy of this order be sent to the Administrative Judge of the concerned Session Division.

31.10.2018*sunil yadav***(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No