

S.No.102

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

CRM-M-53695 of 2018 (O&M)

Date of Decision:05.12.2018

Kamal KaushikPetitioner

Vs.

State of HaryanaRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Pankaj Bali, Advocate
for the petitioner.

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.519 dated 21.06.2018 registered under Sections 420, 406, 467, 468, 471 and 120B IpC at Police Station Civil Lines, Karnal.

A bare perusal of the FIR shows that the petitioner is directly named as In-charge and the Managing Director of the Company, in whose account, the money was deposited. Still further, there is direct allegation against the petitioner that it was he, who had asked the people to invest in the film production by misrepresenting that the Company would pay 20% profit for ten months in continuity. The amount involved in the alleged fraud, qua the complainant only, is more than 1.5 crores. The Police is yet to ascertain the details of the fraud alleged in the FIR.

Although, the accused as an individual has right to life and liberty, yet that right can be subjected to restrictions through the procedure prescribed by law. In case of investigation, the ordinary procedure to curtail the right to life and liberty is that the petitioner can be arrested by the Investigating Officer; even without warrants from the Court. However, to

protect the innocent people from the harassment at the hands of the Police, the extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. But this power is to be exercised by the Court only when there are extenuating circumstances, predominantly; leading towards the innocence of the accused, coupled with the fact that if the accused is protected against the arrest, then the investigation of the case would not be unduly hampered.

In the present case, as mentioned above, there are direct allegations against the petitioner. The Police is yet to unearth the complete dimensions of the alleged fraud committed in the name of the film production. This Court does not find any extenuating circumstances in favour of the petitioner to persuade it to exercise its extra-ordinary power under Section 438 Cr.P.C.

Although the counsel for the petitioner has referred to the anticipatory bail granted to the co-accused, however, this Court finds that the positive case of the said co-accused is that he was one of the investors; with whom the fraud has been committed and that he himself was struggling with the Company to get his money back. Therefore, this Court does not find parity between the case of the present petitioner and the co-accused who has been granted concession of anticipatory bail by this Court.

Dismissed.

December 05, 2018
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No