Sr. No.103

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

CRM-M-951-2019(O&M)
Date of decision:11.01.2019

Gurdev Singh

......Petitioner

versus

State of Punjab

.......Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Kamal Narula, Advocate
for the petitioner.

<u>Rajbir Sehrawat, J(Oral)</u>

Present petition has been filed seeking anticipatory bail in FIR No.211,dated 16.11.2018 registered under Sections 419/420/465/467/468/471/120-B IPC at Police Station Shahkot, District Jalandhar Rural.

The facts leading to the filing of the present petition are that Harjinder Kaur, daughter of Sardar Balwinder Singh, who had an account in Punjab National Bank, initiated a Complaint with the Police, alleging that her father is resident of Phillipines. He has not returned to India. However, the present petitioner impersonated her father and obtained the cheque book from the account of her father; posing as Balwinder Singh. Thereafter, the petitioner had operated the account repeatedly. The petitioner conducted as many as 23 operations of withdrawal by cheques. Hence the petitioner has impersonated her father and defrauded the bank; by withdrawing money from the account of her father. On these allegations, the bank started the process of verification of the facts and found from the CCTV footage that on the dates when the transactions had taken place, the petitioner indeed visited the bank and it is the petitioner only who has withdrawn the money from the account of Balwinder Singh. The Bank also found that while applying for cheque book, the petitioner had given the mobile number of Harjinder Kaur only; for getting the same connected to the account of Balwinder Singh, her father. The bank also found that for all the withdrawals, messages were duly sent to the mobile number of Harjinder Kaur. However, when almost entire funds were siphoned out from the account of Balwinder Singh, only then Harjinder Kaur, approached the bank with the Complaint that the account of her father was being operated by the petitioner; by impersonating her father. With these facts, the bank found that the present petitioner and Harjinder Kaur had colluded and they had withdrawn money from the account of Balwinder Singh through fraudulent means. Accordingly, the present FIR has come into being.

While arguing the case, learned counsel for the petitioner has submitted that the petitioner is having a property dispute with the wife of the account holder, who is the mother of the Complainant Harjinder Kaur, and to discharge their liability in property dispute, the cheques were given to the petitioner by the wife of the account holder and his daughter, Harjinder Kaur. Therefore, the petitioner has not committed any offence as alleged in the FIR.

Having heard the learned counsel for the petitioner and on perusing the paper book, this Court finds that arguments raised by the learned counsel for the petitioner is only a pretext put forward without even denying the allegations against him. Only submission made by the counsel is that the cheques were handed over to the petitioner by the wife and daughter of the account holder. However, the petitioner is in regular contact with Harjinder Kaur as well as her mother. Therefore, he is well aware that the account holder is not residing in India. Despite that, even as per the case of the petitioner, he has been receiving the cheques from account of Balwinder Singh and encashing those cheques. Therefore, even if Harjinder Kaur and her mother are in collusion with the petitioner, the petitioner can not avoid his liability, for having encashed forged cheques at all. In any case, he is involved in fraudulent withdrawal of the money from the account of the said Balwinder Singh; who is not even present in India.

Bare allegations raised in the FIR show a deep rooted conspiracy and fraud; as well as; the impersonation committed by the petitioner. The dimensions of the crime committed by the petitioner can not be deciphered by the Police unless the Police is given free hand to investigate the case and to interrogate the petitioner. It is settled, as held by the Hon'ble Supreme Court, that the interrogation of an accused by the police, when he is protected by the Court Order; is qualitatively and quantitatively different than the interrogation done; when the accused does not have the sense of protection of the Court Order.

Of course, the accused, as an individual, has a right to life and liberty, however, that right to life and liberty can be curtailed according to the procedure prescribed by the law. In case of criminal investigation, the ordinary prescribed procedure is that the Investigating Officer can arrest the accused even without warrant. But; to ensure that innocent person is not unduly harassed by the Police Officers by misusing their authority, special and extraordinary power has been conferred upon the courts to protect the individual from unnecessary harassment. However; this power is so extraordinary that this is not even available in some parts of the country and qua some offences under special statutes; in the entire country. Therefore, being a special power, the power under Section 438 Cr.P.C has to be exercised only in cases, where there are circumstances leading, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that if the accused is protected from the arrest, then the investigation of the case shall not be unduly hampered.

In the present case, this Court does not find any mitigating circumstances; leading towards any degree of ex-facie innocence in favour of the petitioner. Rather this Court is of the opinion that if the petitioner is protected against the arrest in this case then the investigation of the case by the Police would be unnecessarily and unduly hampered.

In view of the above, this Court finds no merit in the present petition. The same is dismissed.

11th January, 2019 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*