

S.No.104

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

CRM-M-8840 of 2019 (O&M)

Date of Decision:27.02.2019

Narinder SinghPetitioner

Vs.

State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Amrinderjit Singh Sandhu, Advocate
for the petitioner.

Mr. J.S. Dhaliwal, 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.253 dated 28.12.2018 registered under Section 420 IPC at Police Station Sardulgarh, District Mansa.

Earlier, the petitioner had filed a similar petition seeking anticipatory bail. However, when the Court was not inclined to interfere, the counsel had sought permission to withdraw the same. Accordingly, the same was dismissed as withdrawn vide order dated 31.01.2019. Hence, again the petition has been filed seeking the same relief.

The allegations against the petitioner are that he had allured the complainant on the pretext that his son would be sent abroad. It was represented by the petitioner that he himself was ordinarily residing in Germany and he had acquaintance with the authorities in India. To instill confidence in the complainant, the petitioner even transported one of the Civil Judge working in the area to Airport along with the complainant. This led the complainant to have full faith in the assurances of the petitioner.

Accordingly, the complainant paid an amount of Rs.2,80,000/- to the petitioner at the first instance. Thereafter, the complainant was made to pay another amount of Rs.1,15,000/-. After this, even two relatives of the complainant were also allured by the petitioner. They were also made to pay an amount of Rs 2 lakhs and Rs.1,15,000/- each. In this manner, according to the FIR, the petitioner has cheated the complainant and his relatives mentioned in the FIR, for an amount of Rs.10,60,000/-. Earlier, the petitioner had even taken the documents like passport of the concerned person and was repeatedly promising them to send abroad. However, thereafter, the petitioner refused to entertain the complainant altogether. When the complainant demanded the money back then the petitioner started threatening them with life. This resulted into registration of the FIR against the petitioner.

Arguing the case, learned counsel for the petitioner has submitted that the Police themselves have conducted two inquiries and found the allegations to be without any proof, and in the inquiry, it was observed that no action need to be taken by the Police in this matter. Hence, the case against the petitioner is false and concocted. It is further submitted by the counsel that earlier the petitioner had approached the High Court for protection of his life and liberty, against the complainant and his relatives. In that CRM-M-50069 of 2017 , this Court had directed the Police that the petitioner and his family members be not harassed. Hence, it is submitted by the counsel that, on the contrary, it is the petitioner who is being victimised by the complainant and his relatives.

On the other hand, learned counsel for the complainant, who is

present in Court, submits that the petitioner is having five more cases of similar nature registered against him. He is a habitual offender. The petitioner had taken money from the complainant and his relatives in presence of the witnesses. It is further contended by the counsel that the alleged inquiry conducted by the Police before registration of the FIR was of no significance; and has not been found to be worth acting upon even by the Police. Hence, the FIR has rightly been registered against the petitioner. As far as the earlier protection petition filed by the petitioner is concerned, it is submitted by learned counsel for the complainant that the said petition itself was based on wrong facts. The complainant had never threatened the petitioner in any manner. In fact, the petition has been filed by the petitioner to create a kind of evidence to show his victimhood.

Having heard learned counsel for the parties and perusing the record, this Court finds that there are serious allegations against the petitioner. As per the allegations contained in the FIR, the petitioner has repeatedly received money from the complainant and his relatives. In the process, he is alleged to have show-cased even his relation with one of the judicial officers working in the area. The amount received by the petitioner; by fraudulent and deceitful means; is also a heavy amount of Rs.10,60,000/-; which is alleged to have been received by the petitioner in presence of the witnesses. Hence, the offence involved in the case is quite serious and the allegations are direct.

This Court does not find any substance in the argument of learned counsel for the petitioner that the inquiries have been conducted by the Police and in those inquiries, the complaint filed by the complainant was

found to be worth not taking any action thereupon. In the first instance, the inquiry is not having any legal significance; being extra statutory in nature. Once the complaint was made to the Police, the only course of action open to the Police was to register the FIR at the first instance, instead of going for any inquiry. In any case, even after holding the inquiry, the Police themselves have found it to be a case worth registration of the FIR. Hence, the allegations levelled in the FIR deserve to be investigated without being influenced by any so-called inquiry, which might have been embarked upon by some unscrupulous Police Officers.

Another argument of learned counsel for the petitioner that the petitioner himself is a victim and he has filed a petition before this Court seeking protection, and in that petition, this Court had directed the Police not to harass the petitioner and his family members, is also found to be without any substance. The order dated 28.03.2018 passed in the above-said petition filed by the petitioner shows that the petitioner has been protected against only an illegal attempt or effort by the Police. However, the action of the Police in case of FIR being registered against the petitioner is specifically protected by the Court order itself. This Court finds sufficient force in the argument of the learned counsel for the complainant that the above said petition appears to have been filed to claim victimhood on the part of the petitioner. This kind of course of action is not unexpected from a person; who is having multiple cases of fraud registered against him. However, the validity of that claim is a subject-matter of another petition filed by the petitioner, therefore, this Court refrains from making any comment in that regard.

Although even the accused, as a citizen, has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. However, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. But, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences; and under some special statutes qua some specified offences it is not available throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

As mentioned above, there are direct allegations against the petitioner; of having received money from the complainant and his relatives. There are other allegations of cultivating and showing off the relations with the official machinery of the area concerned as well. The Police is yet to find out the true dimensions of the fraud committed by the petitioner. Therefore, in the given facts and circumstances of this Court, this Court does not find any mitigating circumstances; requiring this Court to exercise its extra-ordinary power under Section 438 Cr.P.C; for the purpose of

granting anticipatory bail to the petitioner. Still further, it is obvious that if the petitioner is protected against his arrest, at this stage, then the fair investigation of the Police would be unduly hampered.

In view of the above, finding no merit in the present petition, the same is dismissed.

February 27, 2019
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(RAJBIR SEHRAWAT)
JUDGE

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