

Sr. No.104

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

CRM-M-19995-2019

Date of decision:03.05.2019

Vatan Oberoi

.....Petitioner

versus

State of Haryana

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Ms. Anita Tiwari, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

This is a petition filed under Section 438 Cr. P.C. for grant of anticipatory bail to the petitioner in case FIR No.922, dated 03.07.2018 under Sections 406/419/420/467/468/471 IPC, registered at Police Station City Panipat, District Panipat.

Allegations as contained in the FIR are that one Renu Malhotra along with the father, the brother of the petitioner; and the petitioner himself, have committed a fraud with the complainant. The fraud designed by the accused was that the said Renu Malhotra had pretended to have a contract in her favour from the Government of India M.H.R.D, for supplying of the bedsheet, towels and blankets. The complainant was taken in a trap by the accused on the pretext that the said Renu Malhotra was not having sufficient funds, to complete the liabilities under the contract. However, she had already deposited Rs.27 lakhs with the Government of India. If the complainant gives that amount of Rs.27 lakhs to Renu Malhotra, then, the said contract; which had been awarded in her favour;

can be transferred in favour of the complainant. All these negotiations are alleged to have taken with active connivance and participation of all the accused. In the process, the complainant was made to transfer an amount of Rs.25 lakhs through the bank transactions and Rs.2 lakhs in cash. Since the contract was claimed to be in favour of Renu Malhotra, therefore, the entire amount was got deposited in the account of Renu Malhotra. To instill confidence in the complainant, the father of the petitioner had said that Renu Malhotra is his sister and she has been allotted tender No.9091 E.D. May/2018 by M.H.R.D. After the money was transferred in the account of Renu Malhotra, claimed to be sister by Ashwani Oberoi, the father of the present petitioner, he sent the above said work order No.9091 dated 16.05.2018, statedly issued by M.H.R.D, to the complainant, through whatsapp message. Alongwith this letter, another letter was also sent which contained the entire detail of the products which were required to be supplied. It is also alleged in the FIR that after the complainant had already transferred Rs.17 lakhs in the account of said Renu Malhotra then the petitioner, his father and his brother; all the three; had visited the complainant at his house. There they had coerced the complainant by representing to him that Manoj Tiwari, the Member of Parliament, through whom the entire work was stated to be accomplished, was upset with the complainant; because he had not transferred the entire money and that his financial position had also not been found upto the mark for discharging the contract, which could have been given to the complainant. It is thereafter only that the balance money was transferred by the complainant to the account of the said Renu Malhotra. There are stated to be other transactions and incidents as well; which shows positive participation of the entire

family of the petitioner; in the process of the alleged cheating committed upon the complainant. In the process, the said Renu Malhotra and the family of the petitioner; had even created some imaginary personalities like OSD to Member of Parliament. They had got the telephone conversation of the complainant with, allegedly, certain higher personalities; like the film stars and the government officials. However, thereafter, a news report was published in the newspaper that the said Renu Malhotra has committed similar fraud with other persons as well. Then the complainant contacted the father of the petitioner. He told the complainant that said Renu Malhotra has gone somewhere for some work. On this, the complainant got suspicious of the entire sequence of transactions. He started demanding his money back. However, the father of the petitioner threatened the complainant to get him killed. Accordingly, it was alleged that the complainant has been defrauded for an amount of Rs. 27 lakhs by the accused persons mentioned in the FIR; including the present petitioner.

While arguing the case, learned counsel for the petitioner has submitted that there is no specific role attributed to the petitioner. No allegations are levelled against the petitioner. His only mistake is that he had gone to the house of the complainant, alongwith his father and brother.

However, in the facts and circumstances of this case, this Court does not find any force in the argument of learned counsel for the petitioner.

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 qua all offences 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 facts and circumstances of the case, it is not in dispute that the petitioner had accompanied his father to the house of the complainant, at a time when his father was in the process of defrauding the complainant. Still further, on the date when the petitioner visited the complainant alongwith his father and brother, there was not even any other person accompanying them. It is only the member of the family of the petitioner, including the petitioner, who had gone to the house of the complainant to pressurise him to pay more money; after he had already paid Rs.17 lakhs through bank transactions. It is only after the incident which happened during visit of the petitioner to the house of the complainant, that the complainant had paid a further amount of Rs.10 lakhs. Otherwise also, it is writ large on the face of the case that the entire family of the petitioner is actively involved in the alleged fraud, which is committed by getting the money transferred in account of Renu Malhotra, who was claimed to be his sister by the father of the petitioner. In the process, they have not even hesitated in creating the fake documents; stated to be issued from the office

of Government of India. They even faked the famous entities and made them talk to the complainant on phone. In the entire process, the entire family of the petitioner, including the petitioner himself is deeply involved. It is not possible to distinguish and differentiate between the involvement of members of family at this stage. Therefore, this Court does not find any extenuating circumstances reflecting upon ex-facie innocence of the petitioner and thus, requiring this Court to exercise power under Section 438 Cr.P.C in favour of the petitioner. Otherwise also, since the facts are so intricately inter-woven that all the members of this group have to be interrogated deeply by the police to reach to the truth. The modus operandi adopted by the petitioner and his co-accused also suggest that they are not likely to answer the question in the way they are required to; in case they are granted protection by the Court order. Hence, in considered view of this Court, granting the petitioner protection of Court order, would hamper free and fair investigation by the police.

In view of the above, finding no merits, the present petition is dismissed.

3rd May, 2019

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*