

S.No.208

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

CRM-42932 of 2018 (O&M)

Date of Decision:13.03.2019

Habib Khan

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. S.K. Liberhan, Advocate
for the petitioner.

Mr. K.S. Aulakh, DAG, Punjab.

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.95 dated 28.06.2018 registered under Sections 406, 420 IPC at Police Station Urban Estate Patiala, District Patiala.

The FIR in the case was got lodged by investors of the Company, namely, Alpine Agriculture Limited, Urban Estate Phase-I, Patiala. It was alleged in the complaint that the petitioner along with Jaswinder Singh Mann, Kuldeep Singh Mann, Malkiat Singh Mann and Indu Rani, who are the owners/ partners of the above said Company collected crores of rupees by fleecing the intending investors, by promising them hefty returns within a period of 36 months. The modus operandi adopted by the Company, petitioner and his co-accused was that they used to collect Rs.1,000/- per month per investor with a promise that after 36 months, they will be given Rs.47,600/-. In the process, 70 to 80 people have deposited 5-6 crores of rupees with the Company. It was further alleged that after maturity period, when the complainant and other

investors demanded their money back, then the petitioner and his co-accused started lingering on the matter. Thereafter, the accused even started threatening the investor by saying that they had relationship with senior Police officials. However, ultimately, the complainants were successful in getting the FIR registered only with great effort. It is in view of these allegations, that the present petition has been filed seeking anticipatory bail.

Arguing the case on behalf of the petitioner, learned counsel for the petitioner has submitted that the petitioner has been only an agent with the earlier Company of the co-accused; which was named as Admire Infra Tech Limited. However, with creation of the new Company, Alpine Agriculture Limited, petitioner was again engaged as an Agent only for collection of the money; by promising him that he would be paid the commission for collection of said money. Accordingly, the petitioner has received only the commission from the Company. Hence, it is submitted by the counsel that beyond this, the petitioner does not know anything about the Company. It is also submitted that the petitioner has been wrongly involved in this case for misdeeds of his co-accused.

On the other hand, learned counsel for the State, submits that the petitioner is not a mere agent of the Company, namely, Alpine Agriculture Limited. He is one of the partners/ share-holder in this Company. As per the documents, the petitioner has even collected the money from the investors. Hence, direct involvement of the petitioner in fleecing the investors; by misguiding them; is made out from the documents collected by the Police so far. Hence, it is submitted that if the petitioner comes in the custody of the Police, then the Police would be able to unearth

the complete dimension of the fraud committed with the connivance of the petitioner.

It is further submitted that in the process, in which the petitioner is one of the participants, an amount of Rs.7,10,22,200/- has been collected and misappropriated by the petitioner and his co-accused. It is also submitted that there are two more FIRs; of the same nature; against the petitioner.

Of course, the accused as a citizen also 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. Therefore, 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. However, 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, this power is not available even 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.

In the facts and circumstances of the present case, this Court

does not find any mitigating circumstances showing ex-facie innocence of the petitioner to any extent whatsoever. On the contrary, learned counsel for the State has pointed out that the petitioner is mentioned as one of the shareholders in the Company and he has been himself instrumental in collecting the money from the investors. These facts do give an indication of direct involvement of the petitioner in the alleged crime. Hence, this Court does not find any ground to extend the concession of anticipatory bail to the petitioner. Otherwise also, keeping in view the facts of the case, this Court is of the considered opinion that granting any protection to the petitioner against his arrest, would preclude free and fair investigation by the Police.

Accordingly, finding no merit in the petition, the same is dismissed.

March 13, 2019	(RAJBIR SEHRAWAT)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No