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

CRM-M No. 47529 of 2018 (O&M)

Date of decision : 07.03.2019

Davinder Singh

......Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Gurdarshan S. Sidhu, Advocate for the petitioner.

Mr. R. S. Doon, AAG, Haryana.

Mr. S. K. Bishnoi, Advocate for the complainant.

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DAYA CHAUDHARY, J.

CRM No.3317 of 2019

This application is for placing on record Annexures R-1 and R-2.

Application is allowed and Annexures R-1 and R-2 annexed with the application are taken on record.

CRM-M No.47529 of 2018

Petitioner Davinder Singh has approached this Court by way of filing the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to him in case FIR No.947 dated 20.09.2018 under Sections 420, 467, 471, 120-B of the Indian Penal Code, 1860 registered at Police Station – City Sirsa, Distt. Sirsa.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas he was not involved. The complainant was in contact with the petitioner as he was interested in going abroad. Petitioner gave a reference of Landon Live Immigration Services, situated at Hisar Road, Sirsa. The payments were made by the complainant to the travel agent and the role of petitioner was only that he introduced the complainant with the travel agent. Neither the amount was received by him nor he was having any interest.

Learned State counsel has opposed the bail on the ground that wrong averments have been made not only in the petition but also at the time of issuing notice of motion. Learned State counsel also submits that the petitioner prepared and handed over coloured copy of visa to the complainant which was found to be fake and fabricated. A Panchayat was also convened on 30.09.2017 and the petitioner assured that the complainant would be sent abroad on or before 15.11.2017. It was also decided in the Panchayat that in case the complainant was not sent abroad, the person namely Sandeep Yadav through whom the contact was made with the petitioner, would return the amount to the complainant.

Reply of the petition has also been filed which is on record. It has been averred in the reply that specific allegations are there against the present petitioner. He has concealed certain material facts. He is the main accused, but while recording his contentions it has been mentioned that money was not paid to him. It is a case of misrepresentation of facts and the interim order was obtained by making false contentions. As per the allegations, the petitioner demanded ₹5,70,000/- for the visa and ₹ 50,000/- for preparing files and the remaining amount was to be paid on reaching to the destination *i.e.* Cyprus. Petitioner/accused demanded remaining amount in presence of witnesses Rohit, Mohit and Harkishan and an amount of ₹4,20,000/- was paid on 24.08.2017. A video to this effect was recorded and the same was handed over to the investigating agency.

Heard learned counsel for the parties and have also perused the FIR and other documents available on the file.

On perusal of the contents of the FIR, it is clear that the money was paid to the present petitioner. He has not only prepared wrong documents but also supplied the same to the complainant. He has also admitted this fact in the Panchayat convened after lodging of the FIR.

Petitioner was directed to join investigation for handing over original passport and to know the modes operandi. However, he did not cooperate in the investigation. Not only at the time of issuing notice of motion wrong contentions were made before this Court with an intention to obtain interim order but at the time of final hearing also the same contentions have been reiterated. It is not only a case of misrepresentation of facts but concealment as well. The present petition is liable to be dismissed not only on the ground of misrepresentation and concealment of facts but also on the ground that the petitioner has committed fraud with the complainant in not sending him abroad after the amount is received. This fact has been admitted by him before the Panchayat. Even an assurance was given to return the amount, but it was not returned. Petitioner was directed to join investigation and to cooperate in the investigation on two occasions on 29.10.2018 as well as on 28.01.2019. However, neither he cooperated in the investigation nor returned the amount.

It is well settled proposition of law that misrepresentation itself amounts to fraud. A frequent misrepresentation, which appears to be false and with ulterior motive is bad in law. Moreover, when deliberate fraud is played with a motive to secure something, it amounts to abuse of process of law as has been held by Hon'ble the Apex Court in case ***Ram Chandra Singh Vs. Savitri Devi 2003 (8) SCC 319*** and Delhi High Court in S***eemax Construction (P.) Ltd. Vs. State Bank of India AIR 1992 Delhi 197***.

Accordingly, by considering the serious allegations levelled against the petitioner and also the fact that the petitioner has joined investigation but not cooperated with the investigation, I am of the view that it is not a fit case where the petitioner is entitled for anticipatory bail. Custodial interrogation is required for reaching at the bottom of the nexus to unearth modus operandi adopted by the accused in preparing the forged documents by causing financial loss to the complainant. Accordingly, the present petition being devoid of any merit is hereby dismissed.

07.03.2019 **(DAYA CHAUDHARY)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No