Sr. No.104

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

CRM-M-23481-2019(O&M)
Date of decision:22.05.2019

Raman Kumar

...... Petitioner

versus

State of Punjab

.... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Upender Prasher, 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.101, dated 20.04.2019 under Sections 420, 120-B IPC and Sections 467,468 IPC added later on, registered at Police Station Sadar Dhuri, District Sangrur.

FIR in the present case came into being on the statement of one Gurdeep Singh, that he had seen an advertisement in the newspaper, which contained a mobile phone number. The advertisement/claimed to be in the business of helping the people to secure loan from the banks and the financial institutions. The complainant talked on the phone number given in the advertisement. From the other side, one person cajoled the complainant to deposit amount in given accounts, in pieces, and assured the Complainant to get loan sanctioned for him. The said person had disclosed his name as Satpal. By repeatedly making the complainant deposit the amounts in various accounts, a total amount of Rs. 6,45,727/- was got deposited from the complainant, on the assurance that he would be getting Rs.40 lakh as loan. After the money had been deposited, to instill confidence and to further enlarge the business, the said person even handed over two cheques to the complainant, amounting to Rs.28 lakhs, purported to be of the loan amount. However, the said cheques got defaulted and the complainant did not get any loan, as promised by the said person. When the complainant tried to contact the said person on phone, he started deferring the matter and ultimately he refused even to return the money which the petitioner had deposited in the given accounts. As a result, the petitioner approached the police.

During the investigation, the police found that the entire fraud was being conducted by one Pawan Seth and his accomplices. The said Pawan Seth happens to be real brother of the present petitioners. The police found that it was the general modality adopted by the accused and his accomplices, to cheat the people by promising to help them in getting the loan. Main accused has named the present petitioner, as his collaborator in planning and execution of the fraud, in which large number of people have been cheated. Accordingly, the name of the petitioner has come up in the present case accordingly.

While arguing the case, learned counsel for the petitioner has submitted that the petitioner is neither named in the FIR nor the petitioner is having any concern with the business of his brother. It is further submitted that even the accounts in which the money has been transferred by the complainant does not belong to the present petitioner.

Having heard the learned counsel for the petitioner and perusing the case file, this Court does not find any substance 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 and qua some offences under special statutes; it is not available even 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.

As the facts of the case, would show, the brother of the petitioner had been impersonating as Satpal and made the complainant to deposit an amount Rs. 6,45,727/- in different bank accounts by assuring him help in getting the loan of Rs.40 lakhs sanctioned in his favour. The conspiracy is so well knitted that even the main accused has not got deposited the amount in his account directly. It appears to be a case where the accounts are either in the name of fictitious persons or in the name of the other collaborators of the accused. However, it is not disputed that money has been obtained by the accused through bank transactions. Therefore, by any means, it cannot be said that there is no fraud involved in the case.

So far as the argument of learned counsel for the petitioner that he is not named in the FIR and the money has not come in the account of the petitioner is concerned, the same is irrelevant. The name of the petitioner has cropped up in the statement of the main accused, who happens to be the real brother and allegedly the business partner of the petitioner. The fact that the petitioner is not named in the FIR is obviously irrelevant for the reason that complainant was made to talk with an impersonating person. Even the argument qua the accounts not being belonging to the petitioner is irrelevant, for the simple reason that money has come to accounts of the collaborators in the crime. At this stage, there is nothing to believe that the petitioner is not connected with the crime. Since large number of people have been cheated and the name of the petitioner has come up from the statement of the main accused, who is the real brother and allegedly the business partner of the present petitioner, therefore, this Court does not find any mitigating circumstance, showing ex-facie innocence of the petitioner, vis-a-vis the allegations levelled against him.

Otherwise also, this Court finds that the fraud and conspiracy is so meticulously planned and executed by the accused in this case that it would not be possible for the police to unearth the true dimensions of the same unless all the accused, including the present petitioner are taken into custody by the police. Hence, otherwise also, releasing the petitioner on anticipatory bail would hamper the free and fair investigation by the police.

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

22nd May, 2019 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*