

S.No.101

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

CRM-M-51455 of 2018 (O&M)

Date of Decision:24.01.2019

Paramjeet KaurPetitioner

Vs.

State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Inderpal Singh Parmar, Advocate
for the petitioner.

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.235 dated 18.10.2018 registered under Section 420/120-B IPC at Police Station Sadar, Ludhiana.

The allegations against the petitioner and her husband, who is stated to be a 'Raagi', are that they represented to the complainant that the husband of the petitioner had been going to foreign countries in connection with the religious functions, and in the process he has helped several persons to settle abroad; by taking those persons along with him. Assuring that the complainant would also be taken to Canada and he would be made to settle there, the petitioner and her husband had taken Rs.16 lakhs from the complainant. However, the complainant was not taken to Canada. Therefore, the complainant demanded his money back. But the money was not returned to the complainant. As per the allegations, some compromise was effected between the parties. In that compromise, the petitioner and her husband agreed to transfer two plots, which were owned by the petitioner and her husband, in the name of the complainant. Accordingly, two plots measuring 374 square yards and 43 square yards respectively; were

transferred through two sale deeds on 05.01.2016 and 10.03.2016; in lieu of the money received from the complainant. The possession of the plots was also delivered. However, since the complainant was feeling hard-pressed and was in the need of money, therefore, the complainant intended to sell those plots. For that purpose, the complainant approached Patwari for getting the records relating to those plots. The complainant was surprised to know that the plots; which had been transferred by the petitioner and her husband to the complainant, were already under the loan for an amount of Rs.30 lakhs; from the Bank. It was further alleged that at the time of execution of the sale deeds in favour of the complainant, a fake jamabandi was shown to him and that jamabandi did not have any entry regarding this loan. On the basis of those proceedings, even mutation was entered in the name of the complainant. However, subsequently, on deeper probe, it was found that the complainant has been cheated and the plots transferred in his name were having heavy encumbrance, which was not disclosed to the complainant. With these allegations, the FIR was got lodged by the complainant.

While arguing the case, learned counsel for the petitioner has submitted that the case against the petitioner is concocted. In fact, the husband of the petitioner had been paying the instalments of the above said loan of Rs.30 lakhs. The complainant was aware of this fact. Therefore, there is no substance in the complaint made by the complainant.

However, a bare perusal of the papers shows that the allegations against the petitioner and her husband are two fold. Firstly, they duped the complainant of Rs.16 lakhs in the name of taking him abroad

along with a group of Raagis. This itself shows the improper disposition of the petitioner and her husband. Still further, having admitted in the Panchayat, the petitioner and her husband agreed to repay that amount of Rs.16 lakhs; by transferring plots in the name of the complainant. However, as it has come on record, the said plots already had encumbrance of Rs.30 lakhs. The petitioner also appears to be involved in this entire episode; because the said plots; which were transferred in the name of the complainant, were actually in the name of the petitioner and her husband jointly. Therefore, it cannot be said that the petitioner was not aware of what her husband was doing in this regard. There is a plain and simple allegation against the petitioner and her husband; that they had concealed the fact of encumbrance at the time of transfer of these plots in favour of the complainant. The argument of the learned counsel for the petitioner, that the complainant was aware of this fact is also found to be unsubstantiated, because, if the plots were disclosed as already having an encumbrance of more than Rs.16 lakhs of rupees then there would not have been any reason or occasion for the complainant to accept those plots in lieu of an amount of Rs.16 lakhs.

No doubt, the accused as citizen has a right to life and liberty. However, that right of life and liberty can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the Code of Criminal Procedure provides for curtailment of right to life and liberty of an accused. As per the prescribed procedure, the Investigating Officer of a case can arrest the accused even without warrant. However, the Courts have been conferred an extra-ordinary power under

Section 438 Cr.P.C to protect the innocent citizen from undue harassment by the police. This power is so extra-ordinary that it is not available in some parts of the country qua all the offences, and qua some special offences under special Statues; throughout the country. Therefore, the Court has to act with circumspection while exercising of this power. This power can be exercised in favour of an accused only if there are circumstances, leading predominantly, towards the ex-facie innocence of the accused vis-a-vis the allegations against him, coupled with the fact that in case the accused is protected against the arrest then the investigation of the case would not be unduly hampered.

As mentioned above, the facts of the case involve admitted improper conduct of the petitioner and her husband at two stages, which have taken them to criminal realm for two different offences. A bare perusal of the paper book and the facts thereon does not make out any prima facie case of innocence in favour of the petitioner.

Otherwise also, as per the facts of the case, if the petitioner is granted interim protection, then the Police would not be able to decipher the exact dimensions of the criminal activity of the petitioner.

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

24.01.2019
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(RAJBIR SEHRAWAT)
JUDGE

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