

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

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**CRM-M No. 36854 of 2019
Date of decision : 14.11.2019**

Sapna @ Neha**.....Petitioner****Vs.****State of Punjab****.....Respondent****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Vinod K. Kaushal, Advocate, for the petitioner

Mr. Harbir Sandhu, AAG, 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.156 dated 18.7.2019, registered under Sections 386, 342, 332, 506 and 120B IPC at Police Station Rama Mandi, Police Commissionerate, Jalandhar.

As per the allegations in the FIR, the complainant was invited by the petitioner and her co-accused at the house of one Ashwani Kumar, on the pretext of inspection of the property, for sanction of loan, for which one lady named Priya is stated to have applied. When the complainant reached there, one lady took her inside the house for arranging tea etc. On reaching inside the house, the complainant found three men and three women present there. All of them started abusing the complainant. The accused, including the petitioner, started threatening the complainant. Thereafter, the petitioner and her co-accused demanded an amount of Rs.15 lakhs from the complainant to letting him off. When the complainant expressed his inability, then the petitioner and

her co-accused agreed to accept an amount of about Rs.7 lakhs. Then the complainant informed them that he was not having that money with him at that time, and that they shall have to accompany him to the bank, to take that money. After this three persons, namely; Ganga; her husband Ashwani and the present petitioner, accompanied the complainant to the bank and took an amount of Rs.7.10 lakhs from him at the bank premises. With these allegations, the FIR was lodged.

It is contended by learned counsel for the petitioner that the story put up by the complainant is incorrect because there is not even any application for loan; ever moved by the woman Priya. The entire story has been concocted by the complainant just to harass the petitioner. It is contended by learned counsel for the petitioner that the petitioner had gone to the bank only in connection with her personal work. It is also submitted that co-accused of the petitioner had been granted interim protection, therefore, the petitioner be also protected.

On the other hand, learned State counsel has pointed out that the petitioner is part of a gang, which is operating to entice the people and then to black mail them with threat of allegations. The petitioner and her co-accused are involved in one more similar case at another police station. Still further, it is submitted that during the investigation, none of the accused have been able to point out as to for what purpose they have taken Rs.7.10 lakhs from the complainant, the manager of the bank.

Learned State counsel has also pointed out that an amount of Rs.2.60 lakhs which is the part of the money, which the petitioner and her accomplices had received from the complainant, stands recovered from the co-

accused of the petitioner. This fact verifies the veracity of the complaint made by the complainant qua forcing him to pay the money. Since another case of similar nature is also pending, therefore, the possibility of the present case, being a case of black mailing by enticing the complainant for sexual favours, cannot be ruled out.

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 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.

Coming to the facts of the present case, there are specific allegations against the petitioner qua forcing the complainant to pay an amount of Rs.7.10 lakhs to three persons, including the petitioner, who went even to

the premises of the bank to collect that money. Rs.2.61 lakhs has already been recovered from the co-accused Ganga, Dimpal and Ashwani etc.

Hence, in view of the allegations levelled against the petitioner, this Court does not find any mitigating circumstances, showing prima facie innocence of the petitioner, vis-a-vis the allegations levelled against her. Rather her complicity is not only made out from the allegations and the record, rather; is partly admitted by the petitioner, by not denying the fact that she had gone to the bank at the relevant time. Hence this Court does not find any ground to exercise the extraordinary powers provided under Section 438 of Cr.P.C. to grant protection to the petitioner against her arrest.

In view of the above, but without commenting any further on merits of the case, the present petition is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

14.11.2019

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No