

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

101

**CRM-M-48381-2019(O&M)
Date of Decision : 27.11.2019**

Mandeep Sethi

.....Petitioner

Versus

State of U.T. Chandigarh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Sukant Gupta, Addl. Public Prosecutor,
U.T. Chandigarh for respondent No.1.

Mr. Saurabh Kansal, Advocate with
Mr. Tushar Alok, Advocate and
Mr. Munish Garg, Advocate
for respondent No.2-complainant.

ARUN KUMAR TYAGI, J. (Oral)

CRM-36917-2019

The present application is filed by respondent No.2-complainant for placing on record reply to the petition as well as copy of order dated 15.11.2019 passed by this Court and for exemption from filing certified/true typed copy thereof.

For the reasons mentioned in the application, the same is allowed respondent No.2-complainant is exempted from filing certified/true typed copy of order dated 15.11.2019 passed by this Court and reply to the petition as well as copy of order dated 15.11.2019 are taken on record.

CRM-M-48381-2019

The petitioner has filed present petition under Section 438

of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of anticipatory bail in case FIR No.268 dated 07.10.2019 registered at Police Station Industrial Area, Chandigarh under Sections 419, 420 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC') to which Section 408 of the IPC was added lateron.

The above-said FIR was lodged on a written complaint submitted by the complainant-Shantanu Kumar, Authorized Representative of M/s Pearson India Education Services Pvt. Ltd. In the written complaint it was, inter alia, mentioned that the above-said company is engaged in business of conducting various high stakes computer-based examinations across the globe, including but not limited to academic admissions, IT, Government and License examination for various clients at test centers located across the globe including the Test Centre at Elante Mall, 4th Floor, Industrial Area, Phase-I, Chandigarh (for short 'Elante Test centre'). The accused persons in collusion with each other in furtherance of pre-planned conspiracy duped the company by conducting proxy testing against the law and attempting to defraud the immigration authorities of various countries by misusing the marks obtained by proxy testing. When the company was doing routine check of the data, it discovered startling facts which revealed huge fraud by the petitioner-Mr. Mandeep Sethi, Manager of Elante Test Centre, in collusion with other accused. The complainant mentioned in detail the test procedure as well as the modus operandi adopted by the accused persons and mentioned the names of persons involved in commission of the fraud with the prayer for registration of case under Sections 405, 406, 415, 416, 419, 420, 468,

471 read with Section 34/120-B of the IPC and Sections 66 read with Section 43 and 66-D of the Information Technology Act, 2000. FIR was initially registered under Sections 419, 420 and 120-B of the IPC to which Section 408 of the IPC was added during investigation.

While issuing notice of motion vide order dated 15.11.2019, complainant was ordered to be impleaded as respondent No.2.

Learned Additional Public Prosecutor has appeared on behalf of the U.T. Chandigarh and opposed the bail application while the complainant company has also appeared through its Counsel and filed reply opposing the grant of anticipatory bail to the petitioner.

I have heard arguments addressed by learned Counsel for the petitioner, learned Additional Public Prosecution for U.T. Chandigarh and learned Counsel for respondent No.2-complainant and gone through the relevant record.

Learned Counsel for the petitioner has argued that there were no details in the complaint as to the alleged impersonation and the allegations made are vague. From July 2018 to September 2019, 32430 persons undertook the test at Elante Test Center. Out of them only in 23 cases allegations of impersonation have been made. Elante Test Centre Incharge cannot be blamed for the impersonation. There was live monitoring of the entire process by various corporate agencies at different levels. There were five employees employed at Elante Test Centre and the petitioner has been chosen as an scapegoat. The petitioner did not know any of the candidates who undertook the test as per the procedure laid down in Pearson PTE Academic Test Taker

Handbook. The complainant-company made the written complaint on the basis of the complaint made by one of the unsuccessful candidates Ms. Nidhi. In view of the test facility and the number of candidates, the test procedure were to be carried out continuously for a period of 12 hours which subjected the petitioner and other employees to strenuous difficult working conditions. No criminal liability can be fastened upon the petitioner. No recovery is to be made from the petitioner as all the equipments and documents are in possession of the complainant-company and the entire evidence is of documentary nature. The petitioner is ready to join investigation and cooperate for the same. Therefore, the petitioner may be granted anticipatory bail.

On the other hand Additional Public Prosecutor for U.T. Chandigarh and learned Counsel for respondent No.2-complainant have argued that at present 57 accused have been found to be involved in the present case. Four accused namely Sukhwinder Singh @ Bhanga, Tarandeep Walia working as agents in Khanna and Amit Goyal and Mandeep Mann proprietors of M/s Right Way Consultations housed in Elante Mall have been arrested who are in custody. The petitioner along with other co-accused adopted the modus operandi of allowing the real candidate to enter Elante Test Centre after Palm Vein and Bio-metric scan, checking of passport and taking photographs. Thereupon, candidates were admitted in the waiting area of the Test Center. From there, the real candidate used to go to washroom situated outside Elante Test Centre from where the proxy candidate dressed in the similar attire used to enter Elante Test Centre who was not subjected to usual check in procedures. The proxy candidate used to undertake the test scoring

higher grade in terms of the marks thereby benefitting the real candidate. The accused arranging candidates used to charge amount ranging from Rs.6,00,000/- to Rs.14,00,000/- out of which the petitioner was paid the amount of Rs.3,00,000/- per candidate. Accounts of the petitioner have been frozen. During investigation it has been found that fake addresses and fake IDs of the original candidates were used due to which difficulties are being faced in tracing them. The petitioner was the Manager of the Test Centre and the modus operandi for proxy testing candidate was not possible without his involvement in the crime. Custodial interrogation of the petitioner is required for discovering the requisite details regarding the crimes committed and collection of evidence by procuring relevant documents and discovering the identity of other persons involved in the crime.

Since the advent of civilization different methodologies have been adopted for testing capabilities of man in different fields but foolproof method of examination has not yet been devised which cannot be subjected to fraud/cheating by persons involved in unlawful activities. Leakage of question papers, undertaking of examination by proxy candidates and even copying by communication through IT devices with candidates undertaking examination are used to cheat the beneficiaries of such examinations who expect genuine assessment of talent to emerge with the following of the procedures prescribed. The petitioner being Test Centre Incharge cannot escape liability civil or criminal for deviation from the prescribed procedures in conspiracy with others. Thorough investigation of the matter is essential for unearthing the modus operandi adopted and the persons involved in

committing the fraud and also collecting oral as well as documentary evidence including electronic evidence regarding commission of crimes in the present case.

The Courts have been granted power to grant anticipatory bail to protect against motivated criminal litigation instituted at the instance of unscrupulous litigants animated by malice or political vendetta. Grant of anticipatory bail is an extra-ordinary remedy and is not, therefore, intended to be granted in every case. Number of factors including nature and gravity of the offences, quantum of sentence, likelihood of the accused absconding, intimidating or influencing the witnesses or tempering with the evidence or committing similar offences have to be taken into consideration. Socio-economic offences constitute a class apart and need to be visited with different approach in matter of bail. Since socio-economic offences have deep rooted conspiracies affecting the moral fibre of society and causing irreparable harm, the same have to be viewed seriously. Reference in this regard may be made to *State of Bihar and another Vs. Amit Kumar @ Bachaha Rai : 2017 (13) SCC 751* and *Rohit Tandon Vs. Directorate of Enforcement : 2018(11) SCC 46*.

Keeping in view the facts and circumstances of the case particularly that thorough investigation of the crime committed is required and custodial interrogation of the petitioner is necessary for proper investigation of the case, collection of material evidence and discovering the identity of the other persons involved and also keeping in view the possibility of the petitioner influencing the witnesses or tempering with evidence and also fleeing from justice, I am of the

considered view that the petitioner does not deserve the concession of anticipatory bail.

In view of the above discussion, the petition being devoid of any merit and is hereby dismissed.

27.11.2019

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No