210 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-62229-2018 (O&M)
Date of decision: 17.01.2019

Gurmail Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Sandeep Arora, Advocate, for the petitioner.

Mr. Rajat Bansal, AAG, Punjab
for the respondent.

Mr. Gourave Bhayyia Gilhotra, Advocate
for the complainant.

RAJBIR SEHRAWAT, J. (ORAL)

Present petition has been filed seeking anticipatory bail in FIR No. 162 dated 08.12.2018 under Sections 420 IPC registered at Police Station Bullowal, Hoshiarpur.

The allegations against the petitioner are that the present petitioner was already known to the complainant. In July 2017, the petitioner and his co-accused met the complainant in Bazar, in Hoshiarpur, and asked about the well being of the children of the complainant. On this, the complainant informed them that his children had completed their education and were looking for a job. The petitioner and his accomplice stated to the complainant that they were having links with higher officials and they could get a placement for sons of the complainant in Polytechnic College, Hoshiarpur. The petitioner and his accomplice further asked the complainant that if he had any other relatives, they would also arrange job for them as well. On this, the complainant disclosed the name of daughter of his sister-in-law that she was also looking for a job. At this stage, the accused assured that they would get the placement of all three of them at Polytechnic College, Hoshiarpur and asked for a total sum of Rs.9 lacs. The accused asked Rs.6.50 lacs to be paid in advance and rest of the amount to be paid after getting the job. Believing the accused, the complainant handed over the school certificates of both his sons and of daughter of his sister-in-law; to the accused. The accused also asked for signed blank stamp papers of Rs.2,000/- each, executed by the wife of the complainant. They also asked for three blank cheques from the complainant and his sister-in-law, on the pretext that those would be utilized for the purpose of executing the bonds and making payments for getting the job. In the trap of the accused, the complainant agreed to the aforesaid deal.

Thereafter, on 29.08.2017, all the three accused went to the house of the complainant and got a sum of Rs. 2 lacs; along with other relevant documents; as well as the blank cheques. The money and the documents were handed over to the accused in the presence of Ranjit Singh Dolowal Mukerian and father-in-law of the complainant- Puran Singh. While taking these documents, the accused assured that all the three persons mentioned by the complainant would get the job. Again on 08.10.2017, all the three accused persons visited the house of the complainant and took away a sum of Rs.2 lacs in the presence of the same witnesses i.e. Ranjit Singh Dolowal and father-in-law of the complainant-Puran Singh. Still further, an amount of Rs.2 lacs was taken by these accused from the complainant on 14.10.2017 in the presence of Ranjit Singh Dolowal and father-in-law of the complainant-Puran Singh. Still another amount of Rs. 50,000/- was obtained by the accused on 20.12.2017 in the presence of the same witnesses.

After 15 days, when the complainant did not receive any call from the aforesaid Institute, despite the promise of the petitioner and his accomplice, he called the accused and inquired about the jobs. The accused started making excuses and assurd that they would arrange the job within next few days. Again, the complainant came into the trap and did not take any further action. However, when the complainant did not get any call from the Institute, as promised by the accused, he visited the house of the accused and asked them to either return the money or to get the jobs for the persons mentioned by the complainant. However, at this stage, the accused straightway refused either to return the money or to arrange for the jobs. On the contrary, the accused threatened the complainant that they would kill the family of the complainant if he made any complaint anywhere. Hence, it was alleged that the complainant has been defrauded of Rs.6.50 lacs by the accused; including the present petitioner. On the basis of these facts, the FIR was got lodged by the complainant.

Learned counsel for the petitioner has submitted that on the contrary, it is the petitioner who had paid an amount of Rs.3.10 lacs to the complainant since the complainant had assured the petitioner that he would arrange for sending the son of the petitioner abroad. Counsel for the petitioner has referred the documents at Annexure P-1/A, the agreement and the receipts (Annexures P-2 and P-3) showing the receipt of money, received by sister-in-law of the complainant as well as by the complainant. It is further contended that in fact, the complainant had given blank cheques as a security to ensure the maturity of the transactions. However, those cheques were dishonoured. Hence, the petitioner has filed a complaint under Section 138 of the Negotiable Instruments Act as well against the wife of the complainant. It is further contended that the case of the petitioner is further forfeited by the fact that the complainant himself entered into an agreement to sell his property to the petitioner for an amount of Rs.2.5 lacs, out of which, the petitioner had paid the complainant an amount of Rs.1.50 lacs.

On the other hand, learned counsel for the complainant submits that the documents referred by the petitioner have been created by him on the papers which he already got signed by the wife of the complainant. It is further contended that the petitioner herein, is a habitual offender. There are three more cases of the same nature against the petitioner.

Learned counsel for the State, being instructed by ASI Kulwinder Singh, submits that there are three more cases against the petitioner of the similar nature. However, challan has not been filed in those cases, so far. Learned counsel for the State has also pointed out that in those cases also the petitioner had adopted similar modalities of taking blank papers signed from the complainant of those cases and creating agreements thereon.

Having heard the learned counsel for the parties, this Court finds that the case involves intricate factual disputes; leveling serious allegations of cheating and threatening against the petitioner. Even if the case of the petitioner is taken on its face value, then also; by no means; the petitioner could have indulged in this kind of illegal deeds; because he is stated to be a government servant.

Although learned counsel for the petitioner has submitted that the story of the complainant is improbable because once the dispute had already arisen between the parties, thereafter, there was no occasion for the complainant to have entered into the agreement to sell subsequently, yet complainant had signed the agreement as well. But this Court does not find any force in this argument raised by learned counsel for the petitioner as well. Since the allegation is that the petitioner had got blank signed papers/stamp papers and cheques, therefore, it can not be ruled out that the petitioner had got all papers/stamp papers signed in advance and the agreement has been fabricated by him subsequently; in his attempt to create evidence in his defence.

No doubt, the petitioner 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 procedure prescribed for curtailing the right to liberty of an accused is that the Investigating Officer can arrest the accused even without warrant. But to ensure that any innocent person is not unduly harassed by the Police Officers by misusing their authority, special and extraordinary power has been conferred upon the courts under Section 438 Cr.P.C. to protect the individual from arrest so as to avoid 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; 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 vis-a-vis the allegatins, coupled with the fact that if the accused is protected from the arrest, then the investigation of the case shall not be unduly hampered.

In the complicated and disputed questions of facts involved in this case, this Court does not find any mitigating circumstances; assuring the innocence of the accused to any degree; which may require this Court to exercise its power under Section 438 of Cr.P.C. Hence, this Court is not inclined to interfere in the case. Besides, this Court is of the view that any interim protection granted to the petitioner would unduly hamper the fair investigation by the police.

In view of the above, this Court finds no merit in the present petition. The same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

17.01.2019
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Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No