IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.50315 of 2019 (O&M)
DATE OF DECISION : 27th NOVEMBER, 2019

Arjinder Singh

…. Petitioner

Versus

State of Punjab

…. Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Subhash Godara, Advocate and
Mr. Sunny Namdev, 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.09 dated 29.06.2019 registered under Sections 406, 419, 420, 465, 467, 468, 471 & 120-B IPC at Police Station NRI, District Commissionerate Amritsar.

The allegation, in nut shell, are that the complainant, who happens to be an NRI had submitted an application to the police that in the month of November, 2017 the complainant had visited India, to get his bank account converted into the NRI account; because he was not able to control and operate the said account from United Kingdom, where the complainant was residing. However, when he visited the bank, he found that an amount of ₹8,80,000/- has been fraudulently withdrawn from his account. Accordingly, the complaint was made to the police and the above said FIR was registered.

During the investigation it was found that the account of the complainant had become dormant because of not being operated for long time. However, the same was made operational in the year 2016. As per the investigation report, it was made operational during the period of posting of the present petitioner as Manager of the said Branch, where the petitioner remained posted from 02.12.2015 to 20.05.2016. Thereafter, the above said amount of ₹8,80,000/- was withdrawn fraudulently from the said account.

It is contended by the counsel for the petitioner that the petitioner never dealt with the application by which the account of the petitioner was made operational. Neither any amount was deposited in the said account during the tenure of the petitioner nor any such amount was withdrawn from the said account. It is submitted that the petitioner is not connected with the crime, alleged in the FIR. It is further submitted by the counsel for the petitioner that the petitioner had filed application for anticipatory bail before the Additional Sessions Judge, Amritsar. The petitioner was even granted interim protection and the petitioner had joined the investigation as well. However, ultimately the application for anticipatory bail, filed by the petitioner, has wrongly been dismissed by the court below by observing that the petitioner had not cooperated during the investigation.

It is also submitted that the co-accused of the petitioner have already been granted concession of anticipatory bail by the court of Additional Sessions Judge only. Hence, the petitioner be granted concession of anticipatory bail.

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 part of the country qua all the offences and under some special statutes qua some specified offences. 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, this court finds that the assertion of the counsel for the petitioner that the petitioner had never dealt with the application for making the account operational, is factually incorrect even as per his own assertions made before the court below. It has been asserted by the petitioner himself that the application had come to him for making the said account operational and he had marked the same on 10.05.2016, which is just ten days prior to his transfer out from this branch. It is further conceded by the petitioner before the court below that the only work done by the applicant is that he had made the account of the complainant operative one from the dormant one. However, he had followed the instructions of the bank in this regard. The role of the petitioner in making the account operational has been found during investigation as well. Therefore, the petitioner cannot be heard to say now, that he had no role in making the dormant account as operational.

After the account had been made operational, the cheque book is also stated to have been issued on the basis of fresh and fake documents of KYC, being submitted to the bank. Accordingly, the cheque book was obtained and the money was withdrawn through the cheques. The other co-accused of the petitioner are alleged to have only cleared the payments on the basis of the cheques presented to them. Therefore, the petitioner cannot even claim any parity with the co-accused; as such. The initiation of the fraud, if any, involved in this case, was made at the level of the petitioner; who had cleared all further possible hurdles in the way of the fraudsters. Therefore, the role of the petitioner is much more than the alleged role of the co-accused.

Although, the petitioner was granted interim protection by the court below as well, however, the petitioner had not cooperated during the investigation. It also surfaced during the investigation that the papers relating to making the dormant account of the complainant as operational one, were missing from the branch of the bank. Therefore, it could be only the petitioner, who can give the details of the documents and the traces thereof.

In view of the above factual gamut, this court does not find any mitigating circumstance in favour of the petitioner, showing, *ex-facie* innocence of the petitioner vis-à-vis the allegations levelled against him. Still further, since the documents, which are required to be recovered by the police, are such, which can be within the specific knowledge or possession of the petitioner only, therefore, if the petitioner is granted protection against his arrest, the investigation of the police would also be adversely affected.

Accordingly, finding no ground in the present petition the same is dismissed.

However, it is clarified that nothing observed in this order, shall have any bearing on merits of the case, for the purpose of any other proceedings.

27th NOVEMBER, 2019
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No