

202(2) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9584 of 2020

Date of Decision : 08.10.2020

Manmohan Singh and another

..Petitioners

Versus

State of Punjab

...Respondent

(Through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Himmat Singh Deol, Advocate for the petitioners.

Mr. Sandeep Singh Deol, DAG, Punjab.

Mr. J.S. Bedi, Senior Advocate with
Mr. Rubal Garg, Advocate for the complainant.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed under Section 438 Cr.P.C for the grant of anticipatory bail to the petitioners in respect of FIR No.245 dated 23.10.2019 under Sections 420, 406 and 120-B IPC registered at Police Station Civil Lines, Bathinda.

Learned counsel for the petitioners submits that the petitioners have wrongly been implicated in the said case and the report which has been submitted by the police wherein, the burden of the refusal of the visa and the cancellation of the tour has been fastened upon the petitioners is incorrect and has been rendered without considering the relevant facts, including terms and conditions of the agreement executed. Learned counsel for the petitioners further submits that the parties were bound by the agreement dated 11.04.2019, which was entered into between them and the petitioners

were ready to pay the amount to the aggrieved parents according to the said

agreement.

This Court on the basis of said statement, granted benefit of interim bail to the petitioners vide order dated 04.03.2020. The said order is as under:-

“The petitioners have filed this petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.245 dated 23.10.2019 registered under Sections 420, 406 and 120-B of the Indian Penal Code, 1860 at Police Station Civil Lines, Bathinda.

Learned counsel for the petitioners has submitted that the petitioners have been falsely implicated in the case on the basis of biased and unsubstantiated report submitted by the police at the asking of the principal of the concerned school shifting entire burden for refusal of visa and cancellation of tour to the petitioners. The inquiry officer has not taken into consideration the agreement dated 11.04.2019. The petitioners are ready to pay the amount due as per the agreement to the parents. The petitioners are ready to join the investigation.

Notice of motion.

On the asking of the Court, Mr. Sandeep Singh Deol, D.A.G. Punjab accepts notice on behalf of the respondent-State.

At this stage, Mr. Rishabh Gupta, Advocate has put in appearance and filed memo of appearance on behalf of the complainant. He undertakes to file his power of attorney on the next date of hearing.

Copies of the paper book have been supplied to learned State counsel and learned counsel for the complainant, who seek time to file reply. In the meanwhile, the petitioners are directed to join the

investigation within ten days from the date of passing of this order.

In the event of their arrest, the petitioners shall be released on interim bail by the arresting officer/investigating officer on furnishing of bail bonds by them to the satisfaction of the arresting officer/investigating officer. The petitioners shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which they shall not be entitled to the protection of interim bail allowed to them.”

Learned State counsel argues that though, the petitioners had undertaken to pay the amount as per the agreement dated 11.04.2019 to the aggrieved parents but, despite the expiry of more than seven months, no amount has been paid to the parents and sum of approximately Rs.1 crore has been embezzled by the petitioners, which is yet to be paid back by the petitioner to the students concerned.

Learned counsel for the respondent-State submits that custodial interrogation of the petitioners is necessary to unearth the truth and recovery of the amount, which the petitioners had collected from the parents of the students.

Learned Senior counsel appearing for the complainant submits that the petitioners have not only duped the students of St. Joseph's Covent Sen. Sec. School, Civil Lines, Bathinda for which the present FIR was registered but, on the same lines they have also duped the students of Scared Heart Convent School, Barnala as well and in respect of the said allegations an FIR No.421 dated 18.10.2019 under Sections 420, 406 and 120-B IPC was also registered against the petitioners. Learned Senior counsel for the

complainant further submits that in respect of the said FIR No.421 dated 18.10.2019, the petitioners had secured an interim order in the anticipatory bail petition filed by them from this Court. In the said proceedings as well, the petitioners had undertaken to repay the amount according to the agreement to the students/their respective parents of the said school, but, no amount was paid back despite the said undertaking given before this Court and this Court after noticing the intention of the petitioners that they have not paid the amount back to the students despite the undertaking and also after availing various opportunities for refunding the amount back, their anticipatory bail was rejected while deciding CRM-M-9532 of 2020, vide order dated 19.08.2020. The prayer of the learned Senior counsel is that the present petition be also dismissed as the same prayer of the petitioners for the grant of anticipatory bail in identical allegations, in respect of another school has already been rejected by this Court.

Learned counsel for the petitioners concedes that the prayer of the petitioners for anticipatory bail in respect of the similar allegations with regard to the students of Sacred Heart Convent School, Barnala , wherein FIR No. 421 dated 18.10.2019 under Sections 420, 406 and 120-B IPC was registered, has been dismissed.

Learned counsel for the petitioners submits that the petitioners are ready to compromise with the students/their respective parents and, therefore, a chance be given to the petitioners to the said effect so as to bring the litigation to an end.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a matter of fact that two FIRs have been registered against

the petitioners, one FIR being the present one i.e. FIR No.245 dated 23.10.2019 in respect of the students of St. Joseph's Convent Sen. Sec. School, Civil Lines Bathinda and another FIR No.421 dated 18.10.2019 under Sections 420, 406 and 120-B IPC in respect of the students of Sacred Heart Convent School, Barnala. The allegations against the petitioners are identical in both the FIRs. Once, the petitioners had got the interim order from this Court by giving an undertaking that they are ready to comply with the terms and conditions of the agreement dated 11.04.2019, which was entered into between the parties and to refund the amount, for which, the students/their respective parents are entitled for, but the said undertaking is yet to be complied with by the petitioners. A period of more than seven months have elapsed since the undertaking given by the petitioner was recorded on 04.03.2020, but, no amount has been refunded so far.

Further, this Court in almost similar circumstances after noticing the fact that students have been duped and amount, which is running in lacs of rupees is yet to be refunded by the petitioner and the same is not being refunded by the petitioners despite availing several opportunities, has already declined the benefit of anticipatory bail while deciding CRM-M-9532 of 2020 on 19.08.2020. The said order is as under:-

“Prayer in this petition is for grant of anticipatory bail to the petitioners in case FIR No.421 dated 18.10.2019 under Sections 420, 406, 120-B IPC, registered at Police Station City, Barnala.

Counsel for the petitioners submits that the FIR has been registered at the instance of 10 parents of the students of the Sacred Heart Convent School, Barnala against the principal of the school for cheating them by alluring to part away Rs.1,25,000/- per student in two

installments for arranging a trip to USA (NASA). It is stated in the complaint that Principal Lyra Lasrado assured parents that considering her acquaintance with the petitioners and US Embassy, the students will get 100% visa as the petitioners were running a company named Starico Private Limited, Delhi and they will arrange the same. It is further stated in the complaint that in the first installment, an amount of Rs.75,000/- per student was paid to the company of the petitioners, in November, 2018 and the second installment was paid in June, 2019. In the first batch 34 students and 05 teachers appeared for interview at US Embassy on 18.6.2019 and the visa to all of them was refused. In the second batch of 35 students and 04 teachers, who appeared for interview on 4.5.2019, where applications of 30 students and of 04 teachers were rejected and only 04 students were granted visa for 03 months. When the parents demanded refund of the amount, the petitioners stated that as per the cancellation policy, the entire amount cannot be refunded.

Counsel for the petitioners submits that before registration of the FIR, an enquiry was conducted by the Deputy Superintendent of Police, Barnala, wherein it was found that from 69 students, the petitioners have collected a total sum of Rs.1,03,50,000/- through cheques and an amount of Rs. 03 lacs was collected in cash from two teachers. As per the agreement, Rs.25,000/- per student was taken as registration charges. It is further observed in the enquiry of the Deputy Superintendent of Police, Barnala that

the petitioners have paid an amount of Rs.25,000/- each to 64 students only and the balance amount of Rs.67.75 Lacs has been misappropriated by the petitioners by committing cheating with the school management as well as the parents of the students, who are victims. Counsel for the petitioners further submits that the petitioners are still ready to pay the balance amount of Rs.67.75 lacs after deducting the amount of Rs.25,000/- per student as per the agreement between

them.

Counsel for the petitioners further submits that in terms of the interim directions, the petitioners have stated that they are ready to arrange the money and ready to refund the same to the parents of the children.

In reply, the learned State counsel, assisted by the learned senior counsel for the complainant, has, however, opposed the prayer on the ground that the allegation of making the payment pertains to June, 2018 and August, 2019 and till date, the amount has not been refunded back and the petitioners are intentionally not making the payment. Counsel for the petitioners further submits that in terms of the order on 4.3.2020, the petitioners have sought time to arrange the money and their arrest was stayed. On two more occasions, time was extended but till date despite a lapse of about 05 months, no efforts are made to refund the amount, which clearly shows the intention of the petitioners to cheat the complainants.

Learned State counsel has further submitted that another FIR No. 244 was registered against the present petitioner though in that case, he was granted the interim relief, which show that the petitioners are habitual persons and in the instant case, no amount has been refunded and there is no intention of the petitioners to refund the same. After hearing learned counsel for the parties and considering the fact that approximately an amount of Rs.67.75 lacs has been misappropriated by the petitioners and as per the agreement of the cancellation policy, the petitioners could retain Rs.25,000/- per student, which being registration fee was non-refundable. Therefore, by adjusting the said amount, still an amount of Rs.67.75 lacs has been misappropriated by the petitioners.

As per the enquiry report dated 12.10.2019 submitted by the Deputy Superintendent of Police, Barnala, it was found that the petitioners have misappropriated Rs.67.75 lacs and instead of refunding the amount, gaining time by making one excuse or the other, which shows their

intention and in case the amount was refunded, there was no occasion to register the FIR.

Accordingly, I find no ground to grant the anticipatory bail to the petitioners. The custodial interrogation of the petitioners is required. The interim directions dated 4.3.2020 stands vacated and the present petition stands dismissed.

Once, under the similar circumstances, the prayer of the petitioners for the grant of anticipatory bail has been declined by this Court, the prayer of the petitioners in the present petition cannot be accepted.

As far as the prayer of the petitioners that they are ready for the settlement with the students/their respective parents, the said request does not seem to be genuine, for the reasons, that the order declining the anticipatory bail to the petitioners in respect of FIR No.421 dated 18.10.2019 was passed by this Court on 19.08.2020 and approximately one and a half month has elapsed but, the petitioners have not settled the matter and are yet to refund the amount to the students. In case, the petitioners would have genuinely wanted to settle the matter, one and a half month is enough to settle the same after their prayer for anticipatory bail was dismissed.

Even otherwise, this Court while declining the prayer of the petitioners for the grant of anticipatory bail has recorded that the petitioners were given more than two opportunities to refund the amount to the students of Scared Heart Convent School, Barnala but, the petitioners failed to do so. This shows the intention of the petitioners in settling the matter. In the present case also an undertaking was given by the petitioners at the time of seeking the interim order on 04.03.2020, but the petitioners have not refunded the amount, even after the expiry of seven months. A sum of

approximately Rs.1.2 crores is being retained by the petitioner and that too without any valid justification, against the terms and the conditions of the agreement dated 11.04.2019 and are enjoying the interim order. Therefore, the prayer of the petitioners that they are ready to settle the matter is prima facie a camouflage to get the proceedings adjourned as the petitioners have already got an interim order in their favour.

Keeping in view the above, no ground is made out to grant the petitioners the benefit of anticipatory bail.

Accordingly, the order dated 04.03.2020 passed by this Court granting interim bail to the petitioners is vacated and the petition is accordingly dismissed.

Suffice to say that in case the petitioners genuinely wants to refund the amount to the students, as projected before this Court, they can approach this Court again seeking appropriate relief, after refunding the amount to the students/parents concerned.

October 08, 2020
aarti/naresh k.

(HARSIMRAN SINGH SETHI)
JUDGE

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