

**S.No.117**

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

**\*\*\*\***

**CRM-M-18309 of 2020 (O&M)**

**Date of Decision:13.07.2020**

**Tarsem Lal @ Lovely**

**.....Petitioner**

**Vs.**

**State of Haryana**

**.....Respondent**

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**IN VIRTUAL COURT**

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**CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present:- Mr. Dinesh Maurya, Advocate for the petitioner.

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**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.455 dated 13.03.2020 registered under Sections 406, 409, 420, 120-B IPC at Police Station Ambala City, District Ambala.

The case against the petitioner in brief is that he had taken money from the complainant and her relatives from time to time as a temporary loans. However, he has not repaid the same. In the process, from the year 2009 to 2019, an amount of Rs.70 lakhs has accumulated with the petitioner, which he has not paid so far. The entire amount has been taken by the petitioner by promising that he would re-pay the entire amount. When despite repeated requests, the money was not repaid, the intentions of the petitioner became clear and the present FIR was registered.

It is submitted by counsel for the petitioner that the case against the petitioner is totally concocted. The petitioner has not taken any money from the complainant or from her relative. Still further, it is submitted that

from the year 2009 till 2019, there has never been any complaint from the side of the complainant. It is also submitted that there has been no transaction between the petitioner and the complainant or between the petitioner and the brother of the complainant. Hence, the petitioner deserves to be granted concession of anticipatory bail.

Notice of motion.

Mr. Anmol Malik, DAG, Haryana, accepts notice on behalf of the State. Mr. K.S. Hooda, Advocate appears for the complainant.

Learned State Counsel, on instructions from IO Karambir Singh, submits that there are specific allegations against the petitioner qua embezzlement of huge amount. Still further, it is submitted that the transactions between the parties are of the intricate details and spreading over a long period of time. Therefore, to unearth the true dimensions of the crime, the Police would need the custody of the petitioner.

Learned counsel appearing for the complainant has submitted that the submissions made by the counsel for the petitioner are factually incorrect. In fact, the cheques issued by the complainant – Amarjit Kaur have been encashed by the petitioner himself; which is clarified by the presence of signatures of the petitioner on the backside of those cheques. It is further submitted that the petitioner had issued a cheque of Rs.25 lakhs in favour of the complainant, however, even that has been bounced. Resultantly, the complainant has filed the complaint under Section 138 of Negotiable Instruments Act. The petitioner has been summoned in that case. However, the petitioner has been avoiding the service even in that case. As a result, warrants of arrest have been issued against him even in

the complaint filed by the complainant under Section 138 of NI Act.

No doubt, 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, 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, this Court finds substance in the argument of the learned State Counsel that the case involves intricate details of transaction over a long period of time. There are specific allegations against the petitioner relating to huge amounts of money.

Learned counsel appearing for the complainant has also pointed out that the petitioner has encashed the cheques issued by the complainant

by presenting himself before the Bank. In another case pertaining to the amounts, forming part of the present FIR, the warrants of arrest have already been issued against the petitioner.

In view of the above situations, this Court does not find any ex-facie innocence on the part of the petitioner qua the allegations levelled against him. Rather, since the Police is to unearth the intricate details of the transactions and the embezzlement committed by the petitioner, therefore, the Police may require the custodial interrogation of the petitioner. Hence, protecting the petitioner against his arrest, at this stage, would hamper the free and fair investigation by the Police as well.

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

July 13, 2020  
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( RAJBIR SEHRAWAT )  
JUDGE

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |