

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

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CRM-M No.18291 of 2020

DATE OF DECISION : 13th JULY, 2020

Nitin Bansal

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present: Mr. Rajesh Gupta, 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/pre-arrest bail in case FIR No.90 dated 08.06.2020 registered under Sections 406 & 420 IPC and Section 24 of Immigration Act (Section 384 IPC, added later on), at Police Station Nighdu, District Karnal.

The allegations against the petitioner and his co-accused Nitin Goyal are that they allured the complainant and his family members to send them to Canada and ask them to arrange for ₹15,00,000/-. In the first instance, ₹80,000/- were paid to the co-accused Nitin Goyal, out of which ₹40,000/- were paid in bank account and ₹40,000/- were paid in cash. Thereafter, the petitioner had asserted that visa of the nephew of the complainant and his wife had been received, therefore, the accused again demanded ₹2,40,000/- from the nephew of the complainant.

Accordingly, the second installment of ₹2,40,000/- was paid to the present petitioner in first week of July, 2019. Again the petitioner had demanded more money and an amount of ₹5,70,000/- was paid to the present petitioner on 19.07.2019 in front of the respectable persons. Accordingly, the present petitioner had asked the complainant's nephew and his wife to reach Delhi airport, assuring that the co-accused Nitin Goyal will give them the passport and visa at the airport itself. Nitin Goyal, the co accused of the petitioner, reached the Airport and handed over the passport and visa to Ukraine; along with tickets. It was further assured that their man would pick them from the Airport at Ukraine. Accordingly, they reached Ukraine. However, no person on behalf of the petitioner met them at Ukraine. Faced with the difficult situation, the complainant contacted the present petitioner and the co-accused Nitin Goyal, who assured that nothing would happen and some person would contact them at Ukraine. However, the Ukraine authorities sent the nephew of the complainant and his wife back to India. On reaching India, when the complainant again talked to the petitioner and co-accused, they had assured that they would again send them to Canada via Dubai and that the complainant had to pay more money for the purpose. Accordingly, ₹75,000/- more were demanded. On payment of the same, petitioner and Nitin Goyal arranged to send the nephew of the complainant and his wife to Dubai. However, beyond Dubai, the petitioner and his co-accused did not help them. They returned to India. After coming back, when the complainant demanded his money back, the petitioner and his co-accused started threatening the complainant and his family members. Hence, the present FIR has been lodged.

The counsel for the petitioner has submitted that the case against the petitioner is totally concocted. He has not been paid any money by the complainant, his nephew or his wife. Whatever money is paid through the bank or in cash, that was paid to the co-accused Nitin Goyal. It is further submitted by the counsel that although the complainant has submitted that cash payment was made in front of the respectables, however, no names of such respectables have been disclosed by the complainant. Still further it is submitted that there is not even any allegation that the visa to Ukraine was fake. 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 and Mr. Bhupender Singh, Advocate accepts notice on behalf of the complainant.

Learned State counsel, on instructions from SI Rohtash, has submitted that the petitioner has specifically been named by the complainant. The nephew of the complainant and his wife have been defrauded by the petitioner and his co-accused by making false promise to send them abroad. Ultimately when they returned to India and demanded their money back the petitioner refused to return the same. The recovery of the said money and other relevant papers pertaining to these transactions were to be effected by the police. Hence, the petitioner does not deserve any concession of anticipatory bail.

Learned counsel for the complainant has also submitted that the petitioner and his co-accused have cheated the complainant and his family members in a very planned and claver manner. The nephew of the

complainant and his wife were first sent to Ukraine, wherefrom they were immediately shunted out by the Ukrainian authority because papers given by the petitioner to them were not proper. The petitioner did not stop at this. Even when the nephew of the complainant and his wife had returned to India, the petitioner and his co-accused again lured and assured the complainant that they would send the nephew of the complainant and his wife to Canada. More money was demanded by them. Accordingly, again the co-accused and the petitioner had received money from them. Intention of the petitioner and his co-accused had been fraudulent, right from the beginning.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance /interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of

Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Coming to the fact of the present case, there are specific allegations against the petitioner. Even the bank transaction is there qua the deposit of the money in the account of the co-accused Nitin Goyal. Even qua the petitioner, it is specifically averred in the FIR that he received the money in presence of the respectables. The very fact that on the asking of the petitioner, his co-accused Nitin Goyal went to the Delhi airport to hand over the tickets and visa, is sufficient to reflect the participation of the petitioner in the crime. In view of these facts and circumstances, this court does not find any *ex-facie* innocence on the part of the petitioner vis-à-vis the allegations levelled against him. Moreover, the crime committed by the petitioner and his co-accused is of intricate details. The police may require the custodial interrogation of the petitioner to unearth the true dimensions of the crime committed by the petitioner and his co-accused. Hence, if the petitioner is protected against arrest at this stage, that would hamper the free and fair investigation on the part of the police.

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

13th JULY, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>