

CRM-M-18343-2019 (O&M)

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

**CRM-M-18343-2019 (O&M).
Decided on: January 09, 2020.**

Ujwal Handa and another

.. Petitioners

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Prabhjot Singh Waraich, Advocate, and
 Ms.Khushbir Kaur Bhullar, Advocate,
 for the petitioners.**

Mr.M.S.Nagra, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure (for short 'the Cr.P.C.') praying for grant of anticipatory bail in FIR No.33 dated 3.3.2019, under Section 420 IPC and under Section 13 of the Punjab Prevention of Human Smuggling Act, 2012, registered at Police Station City, Batala, Police District Batala, District Gurdaspur.

As per the basic allegations in the FIR, the petitioners-

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accused have taken a sum of Rs.8 lacs from the complainant namely Rahal Suri on behalf of Pawan Handa for the purpose of sending him abroad and that he has not returned the money as yet. Complainant has also relied upon some agreement and some receipts to support his case that the petitioner has actually taken Rs.8 lacs for the said purpose.

Learned counsel for the petitioner has submitted that in fact both, the petitioners and the complainant are residents of the same area and number of transactions have been going on between them for last number of years and that petitioners are neither engaged in any activity of sending anybody abroad nor has taken money for the said purpose. He further submits that this can be substantiated from the fact that there are other two cases of dishonour of cheque under Section 138 of the Negotiable Instruments Act, pending against the petitioners regarding the cheques issued to the petitioner by the complainant out of which one is pending trial at Batala and another at Amritsar.

Learned counsel for the petitioners submits the matter pertains to recovery of money and at the most, it can be a matter of civil nature as apparently, according to the learned counsel for the petitioners, there are money transactions as well. He further submits that had it been a case of taking money for sending son of the complainant abroad, then that would have been a isolated case of taking money and not a case where series of other transactions have taken place between the petitioners and the complainant.

Per contra, learned State counsel, on instructions from

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ASI Dukhwinder Singh, submits that it is a case where as per the allegations, the petitioners have taken money for sending son of the complainant abroad, as such, even though the petitioners have joined investigation, their custodial interrogation is required in the present case and therefore, the petitioners do not deserve the concession of anticipatory bail.

Mr.Ashok Saini, Advocate, who has also caused appearance on behalf of the complainant, assisting the learned State counsel has also advanced arguments on the same lines as that of learned State counsel.

After hearing the learned counsel for the parties and perusing the record, it can be seen that vide order dated 2.5.2019, when the notice of motion was issued, *ad interim* bail was granted to the petitioner subject to compliance of conditions as envisaged under Section 438 (2) Cr.P.C. It has come in the order that the petitioners are willing to repay the money in installments which they have borrowed from the complainant without prejudice to their other rights. The matter was thereafter sent to the Mediation Centre on the basis of the statements made by the parties, however, as the mediation failed, the matter has been sent back for the purpose of adjudication.

On 24.7.2019, the learned counsel for the petitioners again prayed for some time to enable the petitioners to make the payment of reasonable amount to the complainant without prejudice to their rights. Since the settlement could not be effected between the parties, it is necessary to decide the present petition by this Court.

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As per the allegations contained in the FIR the amount of Rs.8 lacs which has been allegedly taken by the petitioners is for the purpose of sending son of the complainant abroad regarding which the learned counsel for the complainant has also relied upon one receipt and one agreement which the learned counsel for the petitioners has disputed as never been executed by or even signed by the petitioner.

Be that as it may, even otherwise also, the contention that the petitioners had undertaken to pay the money cannot be accepted on the ground that said contention was subject to a rider that it is without prejudice to their rights. Contention raised by the learned counsel for the petitioners that in other two transactions proceedings under Section 138 of the Negotiable Instruments Act, are pending attains utmost significance that had it been a case of taking money for the purpose of sending the son of the complainant abroad then what could be the position of other two transactions and proceedings under Section 138 of the Negotiable Instruments Act, pending between the parties. All these matters are to be seen at the time of trial and so far as the present application is concerned, it is only for the purpose of grant of anticipatory bail, at this stage.

Without expressing any opinion as to the merits of the case and considering the totality of the circumstances, this Court is of the view that it is a fit case for the grant of anticipatory bail to the petitioners. Since the petitioners have joined investigation and no recovery is required to be effected from them as it is a case of money transactions only, the interim order dated 2.5.2019, is hereby made absolute.

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Anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

January 09, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

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