

S.No.103

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

**CRM-M-22494 of 2020 (O&M)
Date of Decision:13.08.2020**

**Punjab Singh and another
Vs.
State of Haryana**

.....Petitioners

.....Respondent

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IN VIRTUAL COURT
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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. V.K. Jindal, Senior Advocate with
Mr. Akshay Kumar Jindal, Advocate for the petitioners.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioners under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.326 dated 26.06.2020 registered under Section 420 IPC (Sections 406, 34 IPC and Section 10, 24 of Immigration Act added later on) at Police Station Thanesar Sadar, District Kurukshetra.

The allegations against the petitioners are that the complainant intended to go abroad and in this connection, he met the present petitioners, who assured to send the complainant directly to America on work permit and for that purpose, demanded Rs.18 lakhs from him. Subsequently, both the present petitioners went to the house of the complainant and took away his passport. After getting the passport of the complainant, the petitioners

gave the account number of one Sandeep Singh resident of Delhi and asked him to deposit Rs.4-6 lakhs in that account. The amount was deposited in the said account. Thereafter, the above-said Sandeep Singh sent the tickets of the complainant for a flight from Delhi. Accordingly, the complainant flew abroad. After reaching Ecqador Turo, the complainant found himself trapped, therefore, he made a call to petitioner- Kamaljeet Singh. The accused Kamaljeet Singh told the complainant to do whatever the persons abroad were telling him to do. Thereafter, the complainant was taken to some other places. In the meantime, the father of the complainant contacted both the present petitioners. They demanded more money to take the complainant out of that place. The money was again paid. Hence, the complainant was taken in truck in Kharemal country; where the complainant was kept in custody and given beatings. Again calls were made by the complainant to Kamaljeet Singh and Punjab Singh, the present petitioners; regarding these happenings. Both these petitioners again went to the house of the complainant and had taken more money from his father. After this money was paid, the complainant was made to reach Mexico in a truck; where the complainant was arrested by the Immigration Department and he was lodged in jail. After remaining in custody for 17-18 days, the complainant was asked to return to his country. After coming out of the jail, the complainant was again taken away by some persons having connection with the present petitioners. While with those persons, the complainant made call to his father to give money to the present petitioners once again. After the petitioners were paid more money, the complainant was made to cross the Mexican border and to reach America. In America, again the

complainant was arrested and kept in Jail of Atomos California. After a legal battle there, the complainant was deported to India. After returning to India, when the complainant demanded his money back, the petitioners threatened the complainant and refused to return the money. Hence, the present FIR was lodged against them.

While arguing the case, learned counsel for the petitioners has submitted that, in fact, the main accused is Sandeep; in whose account the money has been deposited. The said Sandeep has been granted concession of anticipatory bail. The case of the present petitioners is at par with the said co-accused Sandeep. Hence, the petitioners also deserve to be granted anticipatory bail. It is further submitted by the counsel that there is nothing on record to show that either the complainant or his father ever paid any money to the present petitioners. It is further contended that the petitioners are semi-literate persons, therefore, they are not even aware how and from where the tickets are to be purchased. Therefore, there is no question of petitioners being involved in this incident. It is further submitted that the inter-connection between co-accused Sandeep and the present petitioners would be revealed only during investigation. Hence, the petitioners deserve to be treated at par with the co-accused Sandeep and deserve to be granted anticipatory bail.

Notice of motion.

Mr. Vishal Malik, DAG, Haryana, accepts notice on behalf of the State. Mr. Vishwajeet Mehla, Advocate appears for the complainant.

Learned State Counsel, on instructions from SI Rishipal and being assisted by learned counsel for the complainant, submits that the

petitioners are the main manipulators of the entire incident. The petitioners have been caught in audio and video recording, demanding money from the complainant/ his father. It is further submitted that there has been continuous contact of the present petitioners with the complainant; even when he happened to be abroad. Still further, it is submitted that true dimensions of the crime committed by the petitioners are yet to be unearthed, therefore, the custodial interrogation of both the petitioners is required. It is further submitted that one of the accused, Punjab Singh, is having another case of similar nature as well.

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, 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 that there are specific allegations against the petitioners. As per the allegations, they have repeatedly demanded money from the father of the complainant. The petitioners have been in continuous communication and contact with the complainant and his father, as well as, the handlers of the complainant; while he was abroad. Therefore, the fact and circumstances of the case do not disclose any ex-facie innocence on the part of the petitioners, so as to create a case for them to get protection against their arrest. Although counsel for the petitioners have pleaded parity with the co-accused Sandeep, however, while restraining from making any further comments in that regard, this Court finds a discernible difference between the allegations against Sandeep and the present petitioners. The said Sandeep is not alleged to be in contact with the complainant or his father after the complainant had left for abroad. Hence, this Court does not find any parity in allegations against the petitioners vis-a-vis against the allegations against the co-accused Sandip.

This Court also finds substance in the argument of the learned State Counsel, that the true dimensions of the crime are to be unearthed by the Police so as to find out their communication and collusion with the foreign nationals, and also other details and expense of their trade. Therefore, protecting the petitioners against their arrest at this stage, would hamper the free and fair investigation by the Police as well. Hence, this Court does not find any ground to exercise its powers under Section 438 Cr.P.C so as to protect the petitioners against their arrest.

In view of the above, finding no merit in the present petition, the same is dismissed.

However, anything observed here-in-above shall have no effect on the merits of the case during the trial, if any.

August 13, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No