

S.No.104

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

**CRM-M-26867 of 2020 (O&M)
Date of Decision:09.09.2020**

**Manjit Kumar
Vs.
State of Haryana**

**.....Petitioner
.....Respondent**

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

Present:- Mr. Sanjay Jain, Advocate for the petitioner.

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.298 dated 03.07.2020 registered under Sections 406, 420, 120-B IPC at Police Station Farakpur, District Yamuna Nagar.

The allegations against the petitioner are that the complainant was allured by one of his relatives with a promise that the said relative would ensure the government job for his son. Accordingly, the complainant had paid an amount of Rs.5 lakhs to the said relative. The son of the complainant would not get any government job. Therefore, the complainant had demanded his money back from the said relative. Instead of returning the money, the relative assured the complainant that he knew one Vishnu,

who was having political relations and that he would ensure a ticket for the complainant for contesting election to the State Legislative Assembly. Hence, the complainant was got in contact with the above-said Vishnu Kumar. Thereafter, the complainant was made to pay money, in cash as well as in different bank accounts, provided by said Vishnu Kumar. In the process, the complainant has been made to pay an amount of Rs.35-36 lakhs through deposit in the said accounts as well as through cash payments. But even the ticket for contesting election to the State Legislative Assembly was not ensured for the complainant. Hence, he demanded money back from the accused. However, instead of returning the money to the complainant, the accused named in the FIR started threatening the complainant with his life. With these allegations, the FIR was got lodged by the complainant.

While arguing the case, learned counsel for the petitioner has submitted that the case against the petitioner is totally concocted. The petitioner has no connection with the complainant. Still further, it is submitted that the complainant himself has not mentioned the name of the petitioner as recipient of any money. The entire allegations are against Vishnu Kumar and his another co-accused. Still further, it is submitted that although one of the co-accused, namely, Vinita, has been sought to be described to be wife of the present petitioner, however, she is not the wife of the petitioner. The name of the wife of the petitioner is Kamlesh Rani. Hence, there is no incriminating material against the petitioner. The petitioner is in government service in Haryana Police. Therefore, there is no possibility of the petitioner going away. Hence, the petitioner deserves to be protected against his arrest.

Notice of motion.

Mr. R.S. Jhand, Addl. AG, Haryana, accepts notice on behalf of the State. Mr. Kulwant Singh Dhanora, Advocate appears for the complainant.

It is submitted by learned State Counsel that the petitioner is directly involved in the present case. In fact, the relative mentioned in the FIR by the complainant is none other than the present petitioner only. It is the petitioner only who had initially received an amount of Rs.5 lakhs from the complainant for the assurance of getting government job to the son of the complainant. Still further, it is submitted that the complicity of the petitioner is directly proved by a recorded conversation, which has been provided by the complainant in the form of recording on a Pen Drive. One of the recordings in the Pen Drive is a conversation between the complainant and the present petitioner from his mobile phone. Even the mobile number of the present petitioner has been duly mentioned in the FIR. Therefore, to connect all these facts; and to unearth the participation of the petitioner in the crime and true dimensions of the crime committed by the petitioner, the custodial interrogation of the petitioner would be required. Hence, the petitioner does not deserve any concession of anticipatory bail.

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 that there are specific allegations against the petitioner. His name and mobile number have duly been mentioned in the FIR. Not only that, as per the assertions of the complainant, the conversation between the petitioner and the complainant has even been recorded by the complainant. The said recording; containing the discussion regarding the payments in question; has already been handed over to the Police. Besides, there is one more case of similar nature against the present petitioner. Therefore, this Court does not find any ex-facie innocence on the part of the petitioner, vis-a-vis, the allegations levelled against him. Besides this, this Court also find substance in the argument of learned counsel for the State that to collect the evidence and to unearth the true dimensions of the crime committed by the petitioner, the custodial interrogation of the petitioner would be required.

In view of the above, this Court is not inclined to exercise its

powers under Section 438 Cr.P.C; so as to protect the petitioner against his arrest. Accordingly, the present petition is dismissed.

September 09, 2020
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(RAJBIR SEHRAWAT)
JUDGE

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