IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CRM-M No.28282 of 2020
DATE OF DECISION : 17th SEPTEMBER, 2020

Ghayour Mohammed Khan

…. **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. Viraj Kadam, Advocate for
Mr. S. K. Verma, 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.217 dated 26.06.2020 registered under Sections 406 & 420 IPC and Section 24 of the Immigration Act at Police Station Sadar Gohana, District Sonipat.

The allegations, as contained in the FIR are that after passing graduation, the complainant intended to go abroad for the purpose of employment. In the process, one Yuvraj Singh contacted him. The father of the complainant was told that an amount of ₹23 lacs would be required to be spent to send the complainant to United States of America (USA). In the month of February, 2019 the complainant along with his father went to meet Yuvraj Singh at his house. Again the money was demanded. As a result, the father of the petitioner sold three *bighas* of his agricultural land out of the total holding of two acres to arrange for the funds. Thereafter, the father of the complainant met the present petitioner along with Yuvraj Singh at Metro Station, Connaught Place, New Delhi and gave an amount of ₹1 lac in cash to the present petitioner. Again the complainant, his father and Yuvraj Singh went to Delhi to give ₹12 lacs to the present petitioner. After handing over the money to the petitioner they returned at the house of Yuvraj Singh. Thereafter, Yuvraj Singh went to Australia in March, 2019. From Australia, Yuvraj Singh sent message to the complainant that his ticket and visa was being sent through Whatsapp and that the complainant and his father should reach Terminal-III of IGI Airport, New Delhi on April 1, 2020. The complainant and his father reached the Airport at the given time, where the petitioner was found present by them outside the Airport and he gave the ticket and passport to the complainant. On that, father of the complainant had again given ₹6 lacs more to the present petitioner. Thereafter, the complainant was flown from Delhi to Moscow, Spain and then to Mexico. Ultimately, he reached California by crossing the boundary of Maxico. On reaching USA the mobile phone and the passport of the complainant were taken away by the authorities. Since the complainant had been sent to USA on fake papers, therefore, the complainant was taken into custody there. After being kept in custody for a long time, the complainant was deported to India. On reaching back to India, the complainant raised his complaint with the accused and demanded back his money. However, the accused, mentioned in the FIR, instead of returning the money, started threatening the complainant. With these allegations, the present FIR has been registered.

It has been submitted by the counsel for the petitioner that the case against the petitioner is totally concocted. In fact, the main accused in the case is Yuvraj Singh. The complainant claims to have settled the dispute with him. There is no documentary evidence that the petitioner was paid any amount by the complainant or his father. It is further submitted that the ticket and other documents were arranged by the co-accused Yuvraj Singh. Therefore, there are not even specific allegations against the petitioner qua sending the complainant abroad on fake papers.

Notice of motion.

Mr. Rupinder Singh Jhand, Addl. AG, Haryana, accepts notice on behalf of the State. Mr. Balkar Singh, Advocate put in appearance on behalf of respondent No.2- complainant.

Learned State Counsel, on instructions from ASI Hari Om, has submitted that there are specific allegations against the petitioner that he received an amount of about ₹23 lacs from the complainant and his father. There is direct allegation against the petitioner that it was he who met the complainant at the Airport and who received part payment of the amount just before the moment the complainant was to Board the flight. Not only this, an amount of ₹2.5 lacs, at least, has been received by the present petitioner through his bank account. Therefore, the petitioner is having direct participation in the crime. The police are to recover the concerned documents, as well as, the money from the petitioner and is also to unearth the scale of the fraud, in which the petitioner is involved. Therefore, the custodial interrogation of the petitioner is imperative.

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, this court finds that there are specific allegations against the petitioner qua having received an amount of ₹23 lacs on different occasions. As per the submissions of the State, an amount of at least ₹2.5 lacs has been received by the petitioner even through his bank account. It is only the petitioner who had, allegedly, interacted with the complainant just before the complainant boarded the flight to Moscow. Therefore, this court does not find any *ex-facie* innocence on the part of the petitioner vis-à-vis the allegations levelled against him. Still further, this court finds substance in the argument of the counsel for the State that the police need custodial interrogation of the petitioner to unearth the true dimensions of the crime of the petitioner and also to collect evidence concerning the present case. Hence, this court does not find this to be a fit case to grant concession of anticipatory bail to the petitioner. Otherwise also, if the petitioner is protected against his arrest at this stage, that would hamper the free and fair investigation by the police.

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

17th SEPTEMBER, 2020 **(RAJBIR SEHRAWAT)**
'raj' **JUDGE**

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No