

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

102

CRM-M No.32008 of 2020

DATE OF DECISION : 15th OCTOBER, 2020

Sara Taggar

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

=====

In virtual Court

=====

Present : Mr. Saurabh Arora, Advocate for the petitioner.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

The present second petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.0054 dated 01.09.2018 registered under Sections 420 & 120-B IPC at Police Station City Zira, District Ferozepur.

At the outset, it deserves to be mentioned that earlier the petitioner had filed a similar petition. However, when the court was not agreeing with the submissions made by the counsel for the petitioner then the permission was sought to withdraw the petition with liberty to avail alternate remedy of surrendering and seeking regular bail. However, again the present petition has been filed for the same purpose.

The allegations, as alleged against the petitioner are that the petitioner is running a coaching centre for English speaking (IELTS). In connection with that, the complainant came in contact with the present petitioner. The petitioner represented to the complainant that she is

engaged in sending the people abroad for better avenues. She could send the complainant, her husband and also her children to Canada and that a total of ₹25 lacs would be the expenses for that purpose. Accordingly, the amount of ₹25 lacs was paid to the petitioner. The papers were also handed over to the petitioner. Besides this the petitioner had also taken certain blank cheques for security for any further payments if required. However, subsequently the complainant and her family members were not sent to Canada. The complainant demanded her money back. However, instead of returning the money, the petitioner tried to involve the complainant in a criminal case under Section 138 of the Negotiable Instruments Act (in short, NI Act) by filing a criminal complaint. Therefore, the present FIR was got registered by the complainant; against the petitioner and her co-accused.

Arguing the case, the learned counsel for the petitioner has submitted that the present FIR is counter-blast to the complaint filed by the petitioner against the complainant under Section 138 of the NI Act. Still further it is submitted that after the present FIR was registered, another FIR was also registered against the petitioner by the brother of the present complainant. However, in that FIR the petitioner has been granted concession of anticipatory bail. In the present case also the mother of the petitioner has already been protected against her arrest by the trial court itself. It is also submitted that it is a dispute between two families. The complainant has sought to create pressure to resolve that dispute. Beyond that, the petitioner is not involved in the present crime. Hence, the petitioner deserves to be protected against her arrest.

It also deserves to be noted that on the first date of hearing the counsel for the petitioner had submitted that the cheque issued by the complainant was for repayment of the amount of loan which the

complainant had taken from the petitioner. The counsel had taken time to show anything to this effect that any loan was advanced to the complainant. However, today the counsel for the petitioner has submitted that the petitioner does not have any document/material to show that any loan was advanced by the petitioner to the complainant.

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 facts of the present case, it has come on record that the complaint was made to the police by the complainant against the present petitioner. The police even conducted a preliminary enquiry in the matter before registration of the FIR. The police *prima facie* found that the petitioner, in fact, has indulged in the crime in the manner alleged against her. Not only this, the police also found the

documents of the complainant, which were required for sending her abroad, with the present petitioner. It has also come on record that the complainant's family had sold agricultural land for giving amounts to the petitioner in installments of ₹70 thousand, ₹10 lacs, ₹10 lacs, ₹4 lacs, ₹35 thousand and ₹10 thousand/-. Therefore, this court finds that there are specific allegations against the petitioner, which have some force as per the record, as well as, as per the preliminary enquiry, allegedly conducted by the police.

Although, the counsel for the petitioner has submitted that the present FIR has been lodged as a counter-blast to the complaint filed by the petitioner against the complainant under Section 138 of the NI Act, however, it is a matter of record that the said complaint filed by the petitioner has since been dismissed and the complainant has already been acquitted of the charges in that case. Therefore, this submission of the counsel for the petitioner is totally irrelevant for the purpose of the present matter. Otherwise also, as mentioned above, although petitioner had claimed that she had advanced some loan to the complainant, however, despite being given an opportunity she has failed to show anything in that regard even now. Therefore, this court does not find any *ex-facie* innocence on the part of the petitioner vis-à-vis the allegations levelled against her. Otherwise also, since the investigation is at initial stage, therefore, the police would be require to effect recoveries of the material/evidence to unearth the true dimensions of the alleged crime by the petitioner. Hence, protecting the petitioner at this stage would hamper the free and fair investigation of the case as well.

Although, the counsel for the petitioner has pointed out that a coordinate Bench has granted anticipatory bail to the petitioner in another case got registered by the brother of the complainant, however,

that aspect is totally irrelevant for the purpose of present case. The petitioner might have been protected against her arrest in another case on the basis of the facts of that case. Therefore, mere fact that the petitioner has been granted anticipatory bail in another case, does not convince this court to protect the petitioner in the present case also.

In view of the above, this court does not find this to be a fit case to exercise its power under Section 438 Cr.P.C so as to protect the petitioner against her arrest. Accordingly, without commenting anything more on merits of the case, the present petition is dismissed.

15th OCTOBER, 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>