

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

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CRM-M No.31696 of 2020

DATE OF DECISION : 7th OCTOBER, 2020

Vikramjit Singh

.... 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. Ravi Kant Sharma, 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.302 dated 29.08.2020 registered under Sections 406 & 420 IPC at Police Station Sadar Ambala, District Ambala.

The allegations, as contained in the FIR are that the petitioner along with one Manoj Kumar, who is the cousin of the complainant, represented to the complainant that Shamsheer Singh, who is Municipal Councilor of Municipal Council, Brara, District Ambala, is ensuring Government job to the candidates by getting money from them. The complainant had also appeared in the competitive examination, conducted by the Haryana Staff Selection Commission (in short, 'the Commission'). Therefore, the complainant was allured to make payment of ₹6 lacs to the petitioner and Manoj Kumar. Accordingly for ensuring job to two candidates, an amount of ₹6 lacs was paid to the present

petitioner and Manoj Kumar. However, when the result was declared by the Commission, the roll numbers of the complainant and another candidate were not reflected in the selected candidates. As a result the complainant demanded his money back. In the first instance, the return of money was totally refused. However, subsequently, after holding of Panchayat cheques were issued by Shamsheer Singh in favour of the complainant and other candidate. However, even those cheques were dishonoured. Hence, the present FIR was got registered by the complainant.

It has been submitted by the counsel for the petitioner that the case against the petitioner is totally concocted. The petitioner has not received any amount from the complainant. In fact, the money was received by Shamsheer Singh. He had even issued the cheques for returning of the same. Therefore, it is clear that the petitioner is not connected with the crime at all. Still further it is submitted that the co-accused of the petitioner, namely, Manoj Kumar; has already been granted bail pending trial under a compromise with the complainant. Hence, the petitioner deserves to be protected against his arrest.

Notice of motion.

Mr. Rupinder Singh Jhand, Addl. AG, Haryana, accepts notice on behalf of the State.

Learned State Counsel, on instructions from SI Amar Singh, has submitted that the petitioner is specifically named in the FIR as the recipient of the money from the complainant. There are multiple audio recordings in which the petitioner can be heard talking about the money and in one of such recording he is heard feeling ashamed on account of non-returning of money. Still further, it is submitted that the money, as well as, the other material connected with the crime, is yet to be

recovered. Therefore, the custodial interrogation of the petitioner is imperative. Hence the petitioner does not deserve any concession of bail.

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, this court finds that there are specific allegations against the petitioner, that the petitioner along with his co-accused Manoj Kumar had received an amount of ₹6 lacs from the complainant for ensuring Government job to two candidates. The petitioner is, allegedly, part of the audio conversation involving this transaction, which reflects upon the participation of the petitioner in the crime. 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 exercise its power under Section 438 Cr.P.C so as to protect the petitioner against his arrest. Otherwise also, if the petitioner is protected against his arrest at this stage, that would hamper the free and fair investigation by the police.

Although, the counsel for the petitioner has submitted that the co-accused has already been granted bail by the trial court under a compromise, however, that itself shows that the incident had, in fact, happened as stated by the complainant. Under the said compromise the co-accused Manoj Kumar is stated to have returned the amount of ₹3 lacs. The remaining amount or ₹3 lacs is yet to be recovered and the petitioner is alleged to be participant in the receipt of that amount. Moreover, the co-accused has been granted regular bail after he was arrested, whereas, the petitioner is seeking anticipatory bail in the matter. Therefore, there is no parity between the petitioner and the co-accused, so far as the aspect of the grant of anticipatory bail is concerned.

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

7th 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>