

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

104

CRM-M No.34184 of 2020

DATE OF DECISION : 28th OCTOBER, 2020

Chamkaur Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

=====

In virtual Court

=====

Present : Mr. P. S. Hundal, Senior Advocate with
Mr. Dinesh Trehan, 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.93 dated 10.09.2020 registered under Sections 406 & 420 IPC, Section 24 of the Immigration Act, Section 13 of the Punjab Travel Professionals (Regulation) Act, 2014 at Police Station Balachaur, District S.B.S. Nagar.

The FIR in the present case came into being on the complaint of one Raj Davinder Singh alleging therein that the petitioner had represented before him that he sends people to the United States of America (USA) by arranging visa and all that. Accordingly, the complainant paid an amount of ₹20 lacs to the petitioner. On receipt of the money, the petitioner provided a visa for USA. However, the same was found to be fake. But then the brother of the complainant, for whom the money was paid, was sent by the petitioner to Mexico where he was

made to cross over to USA. Ultimately, the brother of the complainant was arrested in USA for entering on fake papers. Subsequently he was deported to India. After having suffered that much, the complainant demanded his money back. In the first instance, the petitioner refused to repay any money. However, subsequently, three cheques for some amounts were given by the petitioner to the complainant. However, even those cheques were dishonoured. Instead of returning the money, the petitioner started threatening the complainant. With these allegations the complaint was made by the complainant. However, instead of straightaway registering the FIR the police embarked upon some fact-finding enquiry. In the first instance, some enquiry was conducted. But no action was taken against the petitioner. Feeling aggrieved against the same, the complainant again moved and application to the police, stating therein that no action had been taken by the police on the complaint earlier made by the complainant. It is on this second application that the present FIR has been registered.

While arguing the case, the learned senior counsel for the petitioner has submitted that the case against the petitioner is totally concocted. The petitioner is only a middle standard pass. He is not working as travel agent. The complainant has never paid any money to him. Besides this, the police conducted an enquiry in the first instance and no substance was found in the allegations of the complainant. Hence, initially the FIR was not registered. Subsequently, the FIR has wrongly been registered against the petitioner. It is further submitted that the said brother of the complainant is now in U.K. and he never made any statement to the police before going to U.K. It is only the complainant who is racking-up the issue for motivated reasons.

Notice of motion.

Mr. Randhir Singh Thind, DAG, Punjab, accepts notice on behalf of the State.

Learned State Counsel has submitted that there are specific allegations against the petitioner. The complainant has given specific details; along with the dates; when the money was paid to the petitioner. Still further, it is submitted that the complainant has furnished sufficient evidence to prima facie show that he has been cheated by the petitioner, and his brother was made to travel to Mexico and to USA on fake papers. It is further submitted that the petitioner even handed over three cheques to the complainant for returning of the part of the amount. However, even those cheques were dishonoured. The counsel has further submitted that the complainant has even provided a video recording in which the petitioner is seen receiving money from the complainant. Therefore, the petitioner cannot be heard to say that he has not received any money from the complainant. The State counsel has further submitted that although, in the first instance, the enquiry officer tried to deflect the issue, however, the matter was again examined by the Superintendent of Police. Accordingly, keeping in view the prima facie material and the allegations against the petitioner, the FIR has been registered. The counsel has further submitted that the police are yet to recover the material/evidence qua the offence committed by the petitioner, as well as, the money which he had received from the complainant. Hence, the custodial interrogation of the petitioner is required in the present case.

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.

Now coming to the facts of the present case, this court finds that there are specific allegations against the petitioner. Although, the petitioner submits that he has never been paid any money by the complainant, however, the State counsel has pointed out that there is a video recording in which the petitioner is seen receiving money from the complainant. Although, the veracity of this piece of evidence would be tested during the trial, however, this, *prima facie*, lend credence to the allegations of the complainant. Not only this, the petitioner had even handed over three cheques to the complainant, allegedly, for return of the part of the amount, which are stated to have been dishonoured. In view of these specific allegations and the *prima facie* material alleged by the State, 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 case is at the initial stage of investigation and the police would require custodial interrogation of the petitioner to recover the material and

money from the petitioner; to substantiate the allegations against him and to prove the commission of the crime by him. Hence, if the petitioner is protected against his arrest, at this stage, the free and fair investigation of the case is likely to be hampered. 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.

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

28th 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>