

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202)

CRM-M-36830 of 2020

Date of Decision: 22.12.2020

Col. (Retd.) Sukhvinder Singh Khara and another ...Petitioners
Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. J.K. Singla, Advocate, for the petitioners.
Mr. Amar Ashok Pathak, Addl. Advocate General, Punjab.
Mr. Ranjit Saini, Advocate, for respondent no.2.

Amol Rattan Singh, J. (Oral)

All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

On November 10, 2020, the following order had been passed:

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition, the petitioner seeks the concession of 'anticipatory bail', upon FIR no.135, dated 02.09.2020, having been registered at Police Station Mattaur, District SAS Nagar, alleging therein the commission of offences punishable under Sections 406 and 420 of the IPC read with Section 120-B thereof.

Learned counsel for the petitioners submits that an FIR has been registered only on account of a dispute between the members of the society, with even the structure of the building upto the second floor having been constructed, after which due to differences between the members of the society, financial problems arose and no further

construction could be made.

He further submits that in fact there is no direct allegation of any embezzlement, with the allegation being that the petitioners, as the President and Vice-President of the Society, are not returning the money that had been collected, to the tune of Rs.8,00,000/- plus.

Notice of motion.

Mr. Sourav Khurana, learned DAG, Punjab, accepts notice at the asking of the court.

He submits that as per his oral instructions, even the amount of CRM-M-36830 of 2020 -2- Rs.8,00,000/- was collected without proper approval.

Without making any comment on the actual merits of the case at this stage, looking at the fact that there is no allegation (as contended) of actual embezzlement and the amount involved is Rs.8,00,000/- plus, with the first petitioner being a retired Colonel and therefore it being slightly difficult to accept by this court (at this stage at least), that he would embezzle only Rs.4,00,000/- thereby putting his entire reputation at stake, the petitioners are directed to join investigation within one week and upon them so joining if they are sought to be arrested, they would be released on bail, on their furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

They shall, further, abide by all the conditions stipulated in Section 438 (2) of the Cr.P.C.

If the arresting officer does not join the petitioners in investigation, they would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join them in investigation.

Adjourned to 22.12.2020.

A gazetted officer is directed to file a detailed reply to the petition one week prior to the next date of hearing”

Today, learned State counsel, on instructions, submits that the petitioners in this petition have joined investigation and presently at least their custodial interrogation is not required.

That being so, without making any comment on the actual merits of the case, whatsoever, since the investigating agency itself does not require the custodial interrogation of the petitioners, this petition has in fact been rendered infructuous and is disposed of as such.

However, if the petitioners' custodial interrogation is required at any stage hereinafter, in the context of the FIR in question, he would be given 7 days notice before arrest, duly shown to be served upon them.

Naturally, if the complainant is aggrieved in any manner, of lack of proper investigation, he/she would be always at liberty to avail of his/her remedy as per law, including by approaching the SSP, Mohali, for redressal of his grievance.

Mr. Saini, learned counsel for the complainant, has very vehemently tried to argue (with a disruption in his video/audio connection), that in fact the police is favouring the petitioners, who had duped the complainant and others and consequently they do not deserve to be admitted to bail.

Having considered that argument, it is to be observed by this court that this is a petition filed by the petitioners seeking the concession of anticipatory bail, with them having been admitted to interim bail vide the

order dated November 10, 2020, on the arguments made by their counsel on that date and the reason given by this court thereupon.

Today learned counsel for the State has stated (on instructions) that the investigating agency itself does not require the custodial interrogation of the petitioners, obviously therefore, this court would not direct in this petition at least that they be arrested and consequently, in fact the interim order passed on November 10, 2020, has not been made absolute with the petition itself having been disposed of as it having been rendered infructuous on that statement made, the apprehension of the petitioners of them being arrested having been allayed by the investigating agency itself.

Naturally, if the complainant or any other person is aggrieved of improper investigation by the police, the remedy against that is always available to them and consequently, if the SSP, Mohali, is approached by the complainant or any other such person who is aggrieved of any inaction on behalf of the police, the SSP would go into such grievance in detail after hearing both sides, and then come to a conclusion as to whether the petitioners are actually guilty (as per investigating agency) of the commission of any cognizable offence, or not, and an order shall be passed by the SSP, Mohali accordingly, within a very reasonable time of him having been approached by any person so aggrieved.

22.12.2020
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No