IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-36656 of 2020
Date of decision: 09.12.2020

Jasdev Singh ... Petitioner

versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sanjay Malik, Advocate,
for Mr. S.K.Agnihotri,Advocate,
for the petitioner.

Mr. Naveen Kumar Sheoran, Deputy Advocate General, Haryana.

Mr. Sanpreet Sandhu, Advocate,
for the complainant.

Through Video Conference

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No.276, dated 09.10.2020 under Sections 406, 420 and 120-B of Indian Penal Code, registered at Police Station Ram Nagar, District Karnal.

The allegations which have been contained in the FIR are that the complainant, namely, Dilip son of Charan Singh, resident of Karnal, filed a complaint to the police by stating that he is an agriculturist and his son, namely, Gurbaksh Singh had gone to USA since last two years. The son of the petitioner, namely, Lovepreet Hanjara is also residing in USA and both are in the same area and they often meet with each other. The aforesaid Lovepreet Hanjara trapped his son in ill designs and promised to arrange his PR in USA as he had been doing this job for last many years in India and his father (petitioner) sent unemployed youths to USA for job and he arranges job for them and also arranges their PR. Furthermore, it is alleged that the petitioner had sent around 25-30 persons and that he arranged PR for them and now they are employed in a good job and earning around 3-4 lakhs. When his son asked as to how he will arrange PR, the aforesaid Lovepreet Hanjara said that to take PR of USA, he needs to get married to a USA citizen girl and needs to spend around Rs.25-30 lakhs, out of which Rs.10 lakh is to be paid in advance after which he shall get married and the remaining Rs.15-20 lakhs is to be paid after receiving green card and this whole expense will be recovered within 3-4 months of employment and that thereafter, he will start living happily in USA and will also get green card and that he will also get him relieved from the girl. Further, the son of the complainant told that this is cheating and forgery and his family is a Amritdhari Sikh and cannot marry like this in USA. However, the aforesaid Lovepreet Hanjara told that it would be a marriage on papers and not in real life and after the work is done, he will not have any concern with the girl and he should not take any tension in this regard. Furthermore, the son of the complainant refused this arrangement but Lovepreet Hanjara in order to trap his son met him every 2-3 days who did not know that the purpose was to cheat him in the name of PR and employment for him and that he was in connivance with his father. However, the son of the complainant got trapped in the racket of Lovepreet Hanjara and his father in USA and in March 2019, the petitioner came to the house of the complainant along with his wife and informed that his son Lovepreet Hanjara does the work of sending unemployed youth abroad and also get them employment and PR as well and that he told that he was certified agent from government immigration department and has also obtained certificate in this regard. Both Lovepreet Hanjara and Gurbaksh Singh live in

USA and they have met with each other in this regard. The petitioner also represented the scheme as aforesaid to the complainant and thereafter, the complainant said that they could not engage in such type of wrong act and allow his son to obtain PR like that. However, the petitioner told that there was nothing wrong in that and that he had already sent 25-30 unemployed youths to USA belonging to Pehwa, Asand Karnal and Ambala and they have been taking salary of Rs.7-8 lakhs and that he will come again on the next day. He told that the complainant had to pay Rs.10 lakhs and after marriage green card is to be applied and then to pay remaining Rs.15 lakhs and Rs.2-3 lakhs would be spent in preparation of the documents and that since your son will live in USA, he will earn millions of dollars. Apart from this, some girl also needs to be searched for marriage and once he obtains the green card thereafter the PR, whatever he is spending will be recovered from his new job in 4-5 months and the girl will also walk away after completion of work.

It is further stated in the complaint/FIR that the complainant got trapped into sweet talks of the petitioner and thought that if his son got PR then his life would be smooth in USA. After a gap of 2-3 days, he paid Rs.5 lakh to the petitioner and his wife on 15.03.2019 in front of Darshan Singh son of Munsha Singh. Thereafter on 18.03.2019, the petitioner and his wife came to his house and took Rs.5 lakhs and asked them to arrange for the remaining amount. The petitioner was also informed that for their marriage a girl had been arranged and his son informed him on phone that marriage was fixed for 03.04.2019 and that the marriage certificate had been sent and Lovepreet Hanjara had signed as witness and that now the son of the complainant is married and has applied for green card and on fixing the date for green card, the process for PR will be done and his son will be employed in a job with a salary of Rs.4-5 lakhs salary and they should arrange Rs.15 lakhs quickly and give it to them. Thereafter, in the end of April, 2019, Lovepreet Hanjara with his father (the petitioner) and his mother came to their house and Lovepreet Hanjara spoke to him about his son's PR and also employment, who informed that he and his father has already got settled 25-30 people in USA and all the boys are married in the same fashion and that the PR of Gurbaksh Singh (son of the complainant) will also be done shortly and they should pay remaining Rs.15 lakhs. Thereafter, Rs.15 lakhs was paid in cash. Thereafter, the complainant spoke to his son on telephone many times and inquired from him about the delay in getting the green card and Lovepreet Hanjara told him that it will take 4-5 months and it will be done shortly and thereafter, Lovepreet Hanjara again took Rs.2.25 lakhs from his son so that the work can be done quickly. Thereafter, the son of the complainant informed him over phone that the date for obtaining green card was set for 30.10.2019 and that he along with that girl named Ateka Ebony Marrit (whom he married) needs to appear and after this green card will be issued and on the fixed date, the aforesaid girl did not appear before the green card issuing authority and they have been issued with rejection letter for green card and that he told Lovepreet Hanjara that it was his duty to be present the aforesaid girl before the authority but he did not do this and on this Lovepreet Hanjara started bullying him and told that it was not his duty to bring the girl there and he may do whatever he wants to do. On this, the son of the complainant told Lovepreet Hanjara that his father and mother had taken Rs.27,25,000/- and he took from him 3500 dollars in cash and 3500 dollars in his account forcefully after making various excuses and still he is not satisfied with the demands and then Lovepreet Hanjara became angry and threatened him. It has further stated in the complaint that the petitioner and his son have taken Rs.27,25,000/- to arrange PR and employment in USA from his son, namely, Gurbaksh Singh and the son of the petitioner has also taken 3500 dollars in cash and 3500 dollars in his account forcefully but neither arranged any PR for his son nor got him employment and therefore, has done cheating and forgery and he should return back the money and dollars. In this way, dispute arose between both the complainant and the petitioner and his son with regard to non-arrangement of PR and green card and non-refunding of the money.

The learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and a bare perusal of the FIR, would show that the same would be ex-facie false and concocted. He has submitted that even as per the allegations, the alleged money was taken two years ago and there is neither any document nor any evidence to show that any amount has been transferred in the name of the petitioner or his son. The allegations pertaining to giving of money are with regard to cash amount only. He has further submitted that even for the sake of arguments taking the concocted story put up in the FIR to be true even then no offence is made out against the petitioner on the ground that the object of any implied contract if any, was illegal and against the morals and therefore, even before the Civil Court, the same was not enforceable. The learned counsel for the petitioner has submitted that all the allegations in the complaint/FIR were totally false but has submitted that even if, it is assumingly taken to be true, the FIR cannot be lodged for the purpose of recovery of money. At the most, the same could be a civil dispute and the complainant has misused the process of law by lodging the present FIR by giving a civil dispute, if any, a criminal flavour. The learned counsel for the petitioner while referring to the FIR submitted that even as per the FIR, the son of the complainant got married to a girl, who was a USA citizen for the purpose of getting PR and only on papers, is itself cheating on the part of the complainant and his son to marry a girl fictitiously and then to leave the girl for the purpose of getting the PR by unlawful methods and in the allegations contained in the FIR, it has been stated by the complainant himself that his son got married to the US citizen girl and for that purpose, he had given money to the petitioner.

The learned counsel for the petitioner has further submitted that the allegations are pertaining to transfer of money by way of cash which is not supported by any document. He has further submitted that rather the son of the petitioner and the son of the complainant were staying in the same area in USA and it was due to enmity of the parents, who were also living in the same area that the present FIR has been lodged for ulterior motives. He referred to Annexures P-2 and P-3 to show that the amount of 2519 dollars, which has been shown to be paid to the petitioner was in fact sent from the credit card belonging to the son of the petitioner and therefore, on the face of it, the allegations made in the complaint are false and frivolous. He has further submitted that there is nothing on record to show that any money has been transferred to the petitioner or his son for this purpose.

On 09.11.2020, when notice of motion was issued in the present case, the learned counsel for the complainant had also caused appearance on behalf of the complainant and circulated a copy of the pamphlet, which was in the name of the petitioner to suggest that they are into a business of travel agent etc. The learned counsel for the petitioner has submitted that the aforesaid pamphlet is totally false and the petitioner is not involved in any kind of such activity with regard to the travel agent and has not sent any person abroad on any occasion whatsoever. The said pamphlet was a totally fabricated document. The learned counsel however submitted that the petitioner is doing a business of money transfer services in the name 'Singhs Travels' through Western Union, Ria Money Transfer and MoneyGram and has also circulated a certificate of appointment of the aforesaid companies. It was categorically submitted by the learned counsel for the petitioner that the petitioner is doing only a business of money transfer and not of any travel agent etc. He has, therefore, prayed for grant of anticipatory bail in the present case.

On the other hand, the learned State counsel has submitted that the status report has been filed by the Deputy Superintendent of Police, Karnal, on behalf of respondent-State by way of e-mail, since the matter is taken up through video conferencing. A printout of the same is directed to be taken on record. The learned State counsel has further submitted that after the registration of the FIR, the investigation was conducted and police has recorded the statements of all the witnesses. During investigation, the complainant had produced some documents in which he had sold some land and an earnest money of the amount of Rs.30,31,103/- was got deposited in his account and Rs.10,60,000/- was withdrawn from 01.04.2019 to 01.05.2019. Furthermore, 2500 dollars were got transferred by Gurbaksh Singh into the account of Lovepreet Hanjara in Punjab National Bank and another 900 US Dollars were transferred by Gurbaksh Singh into the account of Lovepreet Hanjara on various other dates (500 Dollars on 10.07.2019, 200 Dollars on 22.07.2019 and 200 Dollars on 24.07.2019). The complainant had also submitted a copy of certificate of marriage between Gurbaksh Singh and Ateka Ebony Marrit and also a letter of cancellation of marriage. Apart from this, Rs.1,73,425/- was deposited in the account of Jasdev Singh (the petitioner) in

Punjab National Bank. It is further submitted in the affidavit that recovery of Rs.27,25,000/- and 7000 Dollars is to be effected from the accused. It is further submitted in the affidavit that with regard to the fact as to whether the petitioner is involved in other cases and as to whether the petitioner had been dealing with other persons for such like matter or not, inquiries were made by the Investigating Officer. Inquiry was made from one Lakhbir Singh son of Narain Singh, resident of Pehowa, who stated that in the month of January and February last year, a shop situated in Multani Colony, Pehowa owned by him was taken on rent by the petitioner for setting up the business office under the name and style of Singh Tour and Travels and Western Union, who used to do the business of sending money abroad and the petitioner has vacated the said shop about 8-10 days back. Similarly, one Mandeep Singh son of Joginder Singh, resident of Pehowa, told that he is running the business of Inverter Battery in a shop situated in Baba Deep Singh Marg, Multani Colony, Pehwa and in front of his office, the petitioner has opened his office for sending the persons abroad and he remained in the said shop for about 1½ years and now for the last 8-10 days he has vacated the shop and he has also installed inverter battery for his office from him. Similarly, inquiry was made to one Aashish Bansal son of Satya Narain Bansal, who is doing the work of Kabari in Multani Mohalla, Pehowa, told that adjoining his shop, the petitioner was running his business of sending the persons abroad and he has vacated the shop about 8-10 days back. One Sandeep Singh son of Balwinder Singh, resident of Pehowa told that he is doing the business of Interior Decoration and near his shop, the petitioner is running the business in a shop for sending the persons abroad. It is further mentioned in the affidavit that there was one case bearing FIR No.156 dated 15.06.2000 under Sections 364, 148, 149, 302/201 IPC which was registered against the petitioner and other accused and a case bearing FIR No.169 dated 05.07.2000 under Sections 302, 201 and 120-B IPC which was registered against the petitioner and other accused and in both the cases, the petitioner remained in judicial custody in Karnal in the year 2000 to 2001 and lateron, on the basis of compromise, the petitioner and others were acquitted by the learned Court. Apart from this, on the basis of a complaint of Paramjit Singh son of Partap Singh, a case bearing FIR No.0153 was registered against the petitioner on 03.12.2020, under Sections 10 and 24 of the Immigration Act and Section 406 and 420 IPC. The learned counsel for the State further submitted that in view of the above, the present petition is liable to be dismissed.

The learned counsel for the complainant has also supported the arguments, which have been made by the learned State counsel and submitted that since a huge amount in involved in the present case, which is required to be recovered from the petitioner, the present petition may be dismissed.

Rebutting the arguments raised by the learned State counsel and the learned counsel for the complainant, it has been submitted by the learned counsel for the petitioner that the police as well as the complainant have gone too far in creating false evidence against the petitioner. He has submitted that the aforesaid persons, which have been referred to in the affidavit of the Deputy Superintendent of Police, Karnal, were coerced and pressurized by the police to give such statement that the petitioner is running a business of sending the persons abroad at different places. The learned counsel for the petitioner has further submitted affidavits of Suresh Kumar, Lakhbir Singh, and Ashish Bansal (which have been referred in the aforesaid affidavit by the State), in which these persons have stated that on 10.11.2020, one Dalip Singh visited them along with some policemen and made them sign some papers in which it was written that in the above-mentioned shop, the petitioner is doing the business of tours and travel and that since the police was with him and they pressurized them they signed the papers. It is further stated in the affidavits furnished by these three persons that the petitioner was in the business of money exchange and not in tours and travel and the police had pressurized them into signing the statement and that now by way of the present affidavits, they wishe to bring true facts before the Court.

The aforesaid three affidavits have been sent on e-mail to this Court. A printout of these affidavits are hereby taken on record as Marks 'X', 'Y' and 'Z'. The learned counsel for the petitioner has further submitted that it was a case of extortion of money from the petitioner by using unlawful methods and by using the police authorities for achieving the ulterior motive.

I have heard the learned counsel for the parties.

The facts which emerged from the aforesaid submissions of the parties, pleadings and the documents available on record would show that the complaint/FIR was lodged by alleging that the complainant and his son have been induced by the petitioner and his son for giving an amount of 27,50,000/- apart from the some US Dollars so that the son of the complainant will get married with a US citizen girl for the purpose of getting a green card and thereafter to cancel the marriage and to remain in USA thereafter. As per the allegations in the FIR itself, in fact the marriage was held on papers between the son of the complainant and the USA citizen girl and application for green card was also made. But thereafter, the girl did not present herself before the authorities and the marriage was cancelled and the green card was also refused. Without going into the controversy as to whether an amount was paid for the aforesaid purpose or not, it seems that the purpose of paying money was purely for an illegal and immoral objective. It is the case of the complainant himself that he has given money for the aforesaid objective and now once the aforesaid immoral and illegal objective was not achieved then the present FIR has been lodged for recovery of money. Furthermore, the State has filed an affidavit by referring to some persons from whom they inquired that the petitioner was engaged in the business of sending persons abroad but thereafter, the petitioner had placed on record affidavits of three persons from whom the police inquired, who stated that the police as well as the complainant has pressurized them to sign the papers and they categorically stated in the affidavit that the petitioner is not doing the business of tours and travel but he was in the business of money exchange.

A bare perusal of the affidavit, which has been filed by the State does not suggest even remotely as to how and why the custodial investigation of the petitioner is required. It is not the case of the State either in their affidavit or in the submissions of the learned State counsel that in case the petitioner is granted anticipatory bail then he may influence any witness or temper with any evidence. Apart from this, at the most the matter pertains to financial transactions, if any, and therefore, there is no reason as to why the anticipatory bail should not be granted. So far as the pendency of the other cases against the petitioner are concerned, in the two FIRs of the year 2000, the petitioner has already been acquitted and so far as the third FIR dated 03.12.2020 is concerned, the same has been lodged after the present FIR and even after issuing the notice of motion by this Court. The submission made by the learned counsel for the petitioner that the police is actively conniving with the complainant and has pressurized the witnesses to give false statement before the police would also carry weight to substantiate his submissions that the aforesaid FIR of 03.12.2020 was also a motivated FIR which was lodged after notice was issued in this case.

Therefore, considering the totality of the circumstances of the present case, it is just and proper to grant anticipatory bail the petitioner. In case the petitioner is arrested, he be released on anticipatory bail subject to his furnishing personal/surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

[JASGURPREET SINGH PURI]
JUDGE

09.12.2020
adhikari

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No