

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-2156-2020 (O&M)
Date of Decision:- 12.10.2021

Ajaib Singh Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. S.S.Duhan, Advocate, for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana,
assisted by ASI Gurwinder Singh.

Mr. Parminder Singh, Advocate, for the complainant.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of anticipatory bail in respect of a case registered against him vide FIR No. 167, dated 6.12.2019, Police Station Ram Nagar, District Karnal, under Sections 406, 420, 506, 34 IPC.
2. At the time of issuance of notice of motion, the following order was passed by co-ordinate Bench of this Court on 20.1.2020:

“The petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.167 dated 06.12.2019

registered under Sections 406, 420, 506 read with Section 34 of the Indian Penal Code, 1860 at Police Station Ram Nagar, District Karnal.

Learned Counsel for the petitioner has submitted that the petitioner had been granted interim anticipatory bail by learned Additional Sessions Judge, Karnal with direction to join investigation but subsequently anticipatory bail application was dismissed on the ground of non-cooperation with the Investigating Officer and non-supply of documents to him, without taking into consideration that the documents in question were also with the son of the complainant. The petitioner is ready to join the investigation.

Notice of motion.

On the asking of the Court, Mr. Arjun Singh Yadav, Asstt. A.G., Haryana accepts notice on behalf of the respondent-State. Copy of the paper book has been supplied to the learned State Counsel, who seeks time to complete his instructions.

In view of the facts and circumstances of the case, presence of the complainant is considered to be necessary for just and proper decision of the petition and on oral request made by learned Counsel for the petitioner, complainant is ordered to be impleaded as respondent No.2. Memo of Parties be amended accordingly.

Adjourned to 24.03.2020.

Notice to newly added respondent No.2 be issued for that date on filing of process fee by the petitioner and notice be also given dasti, if so desired.

In the meanwhile, the petitioner is directed to join the investigation as and when called upon to do so. In the event

of his arrest, the petitioner shall be released on interim bail by the arresting officer/investigating officer on furnishing of bail bonds by him to the satisfaction of the arresting officer/investigating officer. The petitioner shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which he shall not be entitled to the protection of interim bail allowed to him.”

3. Learned counsel for the petitioner has submitted that even if the allegations, as levelled in the FIR are taken to be correct, it is evident that it is the co-accused Bijender who is the main accused and who had held out a representation to the complainant to send his son abroad though there is a reference in the FIR that the son was to be sent abroad by Bijender through the instant petitioner.
4. Learned counsel for the petitioner has further submitted that the very fact that when a dispute arose amongst the complainant and the accused, it is the co-accused Bijender who issued a cheque for an amount of Rs.36 lakhs undertaking the entire responsibility would itself show that it is the Bijender who is the main accused.
5. It has further been submitted that in any case it is not in dispute that the son of the complainant is presently in America and is well settled there.
6. Opposing the petition, learned State counsel assisted by learned counsel for the complainant has submitted that since the name of the petitioner does figure in the FIR and wherein it is also stated that some amount had been entrusted to him, his complicity is clearly evident. Learned State counsel has also submitted that in fact there

are some bank transactions between the petitioner and Bijender which would show that they were in league with each other for the purpose of defrauding people. It has been submitted that in fact the complainant's son was sent to America by dubious means i.e. in an illegal manner, though perhaps subsequently he has been granted asylum.

7. Learned counsel for the complainant has specifically submitted that in fact upon arrival of complainant's son, he was detained by the police and it was much later that he was granted asylum and that during the period of detention the petitioner or the co-accused never furnished any information about the whereabouts of the complainant's son and it was only at his own level that ultimately he was able to locate his son and got the needful done so as to get him released.
8. I have considered rival submissions addressed before this Court.
9. While, it is correct that the name of the petitioner does figure in the FIR, but a perusal of the FIR as a whole would indicate that it is the co-accused who had initially held out the representation to the complainant regarding sending his son abroad. Still further the very fact that it is the co-accused who had given a cheque for Rs.36 lakhs to the complainant when the dispute arose would also indicate that it is the co-accused who is the main accused. It is also not in dispute that the complainant's son presently is settled in USA though he may have been sent by dubious means. Still further pursuant to interim directions issued by this Court, the petitioner is stated to have joined

investigation though of course the State counsel has submitted that the petitioner is not co-operating inasmuch as he is not getting recovered the amount allegedly taken by him. However, the fact that there is no recovery of such amount cannot strictly be said to be non-cooperation by an accused.

10. Having regard to the facts and circumstances of the case, in my opinion, it is a fit case for grant of anticipatory bail. The petition, as such, is accepted and the interim directions issued by this Court vide order dated 20.1.2020 are hereby made absolute subject to the condition that the petitioner shall join investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

12.10.2021

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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No