

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

CRM-M-17057-2021

Date of Decision: 06.12.2021

Sewak Singh alias Gursewak SinghPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Bikramjeet Singh Jatana, Advocate for the petitioner.

Mr. M.S.Nagra, AAG, Punjab.

Mr. J.K.Singla, Advocate, for the complainant.

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner seeks the concession of 'anticipatory bail' under the provisions of Section 438 Cr.P.C., upon FIR No.40, dated 22.03.2021, having been registered at Police Station Bhikhi, District Mansa, alleging therein the commission of offences punishable under the provisions of Sections 420/406/120-B of the IPC.

At the time when notice of motion was issued on 07.06.2021, the following order was passed by this court (co-ordinate bench):-

“This petition under Section 438 CrPC has been filed by petitioner Sewak Singh @ Gursewak Singh, inter alia, praying for grant of anticipatory bail in case FIR No.0040 dated 22.03.2021 under Sections 420/406/120-B IPC registered at PS Bhikhi, District Mansa.

Learned counsel submits that there was earlier also some dispute as mentioned in para 3 of the petition between the petitioner and the complainant. He then submits that the allegations in the FIR are not supported by evidence and the petitioner has a good prima facie case.

Record shows that this case had come up for hearing on 22.04.2021. Thereafter it was adjourned for the filing of reply.

Today on the resumed hearing, learned State counsel as well as complainant have opposed the prayer made by the petitioner.

It is submitted that 3 complainants had separately given a total of Rs.14 lakhs to the petitioner and, therefore, the petitioner is not entitled to the concession of anticipatory bail. It is further submitted that in fact as has been noticed in the FIR, the allegations are that the petitioner had deposited the amount in the name of Bharat Singh. It is further mentioned in the FIR that at a later occasion i.e. after convening of the Panchayat, the cheques issued by Bharat Singh were handed over to the complainant party but the same have not been honoured.

Faced with this, learned counsel for the petitioner submits that in order to show his bona fide, the petitioner would get an FDR made of Rs.5 lakhs in his own name and deposit the same with the Investigating Officer and would not encash the same till the final decision in the case and shall abide by the final order to be passed by the trial Court.

Notice of motion.

On the asking, Mr. HS Sitta, AAG Punjab accepts notice through video conferencing.

Counsel for the petitioner submits that the petitioner is ready to join the investigation. He submits that because of COVID situation also, retention of the petitioner behind the bars would be dangerous to his life.

Without commenting upon the merits of the case and without recording any opinion, in the peculiar facts and circumstances of the present case, this Court deems it appropriate to direct the petitioner to join the investigation and appear before the Investigating Officer.

List on 11.08.2021.

Reply, if any, be filed meanwhile.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal/surety bonds to the satisfaction of the Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall abide by the conditions as provided under Section 438(2) CrPC.

In order to show his bona fide, the petitioner is directed to get an FDR made in his own name in the sum of Rs.5 lakh within 10 days and deposit the same with the Investigating Officer with an undertaking that he shall not encash the same till the final decision in the case. This shall be in addition to other bail bonds/surety that the IO may require.”

Thereafter, as recorded in the order dated 14.09.2021, learned

State counsel had submitted on instructions that the petitioner had joined

investigation and deposited a demand draft/fixed deposit receipt for an amount of Rs.5 lakhs with the investigating officer, but with learned counsel for the complainant not present at that stage, hearing in the matter had been adjourned to 30.09.2021, on which date the following order was passed:-

“Case heard via video conferencing.

Pursuant to the orders earlier passed, today learned counsel for the complainant appears and submits that though the petitioner has deposited, in his own name, a receipt showing a fixed deposit of Rs. 5,00,000/-, however, he actually owes the complainant Rs. 14,00,000/- and therefore that does not redress the grievance of the complainant. Adjourned to 15.11.2021.

To be shown in the urgent motion list and to be taken up as the first case of the day. Interim order to continue, till the next date of hearing only and specifically.”

On 15.11.2021, the following order was passed:-

“On the request of the learned State counsel to take proper instructions as to who is seen in the video CD as has been annexed with the reply, allegedly giving money to the petitioner, adjourned to 17.11.2021.

Interim order to continue till then only and specifically.

To be shown in the urgent motion list.

Today, with the video clip having been seen by this court and it having been inquired from both, learned State counsel as also from learned counsel for the complainant, as to who the three persons visible in the video clip are, both have stated (learned State counsel on instructions from ASI Nachattar Singh), that the person seen counting the money is the petitioner (Sewak Singh alias Gursewak Singh), with the other two persons in the video being the son of the complainant and another aggrieved person.

Learned counsel for the petitioner however still insists that there is no evidence of the petitioner actually receiving money for the purpose of recruiting any person in the Army and that the money as is alleged to be seen in the petitioners' hand in the video clip (which again is denied), could be for any other reason, the petitioner being a truck operator.

It is to be observed by this court that this a petition filed under Section 438 for the Cr.P.C., seeking that the petitioner be admitted to anticipatory bail; and what is to be seen by this court is as to whether a *prima facie* case is made out at all or not against the petitioner on the strength of which he may be admitted or not admitted to such bail.

Looking at the fact that the investigating officer as also the complainant are identifying the petitioner to be the person counting the money stated to have been received from the complainant and other such persons similarly placed, for the purpose of recruitment of different persons to the Army, I would see no ground whatsoever to entertain this petition any further, which is consequently dismissed, with the interim order passed in favour of the petitioner vacated.

Obviously, all observations made in any order passed in this petition would be taken to be only observations made in the context of a petition filed under the provisions of Section 438 Cr.P.C. and investigation would continue as per evidence gathered; and the trial (if it comes to that stage), would equally obviously continue on the basis of evidence led before that court.

Whether or not any other person other the petitioner/complainant etc. are guilty of the commission of any offence, would be gone into by the SSP concerned.

In view of the fact that the petitioner has not agreed that the amount of Rs.5 lakhs as was deposited by way of a fixed deposit pursuant to

the order dated 07.06.2021, be released to the complainant, the said amount would be returned to the petitioner.

December 06, 2021

dharamvir

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned : YES
Whether Reportable : NO