

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

CRM-M No.16818 of 2021

Date of Decision: November 11, 2021

Balwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Dhivya Jerath, Advocate for the petitioner.

Mr. Manreet Singh Nagra, AAG, Punjab.

Mr. Manpreet Singh, Advocate for the complainant.

Amol Rattan Singh, J. (Oral)

Case heard by way of video conferencing.

On 20.04.2021 the following order had been passed by this Court, by noticing the contention raised by the learned counsel for the petitioner:-

“Case heard by way of video conferencing.

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of anticipatory bail, upon FIR no.3, dated 30.03.2021, having been registered at Police Station NRI Moga, District Moga, alleging therein the commission of

offences punishable under the provisions of Sections 406, 420, 467, 468, 471 and 120B of the IPC.

Learned counsel for the petitioner first points to the affidavit executed by the co-accused of the petitioner, Chamkaur Singh (copy Annexure P-9), to the effect that the petitioner, i.e. his brother, who was in need of Rs. 4,40,000/- to repay a bank loan, which amount was therefore given by Chamkaur Singh to him and which was duly paid back by the petitioner to Chamkaur Singh. She therefore submits that the petitioner in any case cannot be an accused of defrauding the complainant of Rs.27 lacs in terms of what has been stated in the FIR.

She next points to the statement made by the son of the complainant before the police (copy Annexure P-3), i.e. by Gurcharan Singh, to the effect that in fact his father, to his knowledge, used to give blank signed cheques to Chamkaur Singh who is his nephew and in whom he has complete faith, to discharge his liabilities etc in India, while the complainant himself was in Canada.

Learned counsel for the complainant on the other hand submits that as an amount of Rs.4 lacs had been transferred directly from the account of the complainant, Bhag Singh, to that of the petitioner(Balwinder Singh), he cannot 'absolve himself' of complicity in the matter, with even bank officials allegedly being involved in the fraud of Rs.27 lacs committed upon Bhag Singh.

Learned State counsel submits that the FSL report is also to the effect that the signatures on the cheques in question are not actually of Bhag Singh and therefore obviously it is a fraud committed.

Without making any comment on the merits of the case, notice of motion is issued, with Mr. S.S. Deol, learned DAG, Punjab, accepting notice on behalf of the

respondent State, on the asking of the court, and with Mr. Manpreet Singh, Advocate appearing for the complaint.

Considering all the circumstances, with Chamkaur Singh himself stating that he had given an amount of Rs.4 lacs to the petitioner (i.e. his brother though the petitioner is not described as his brother in the FIR, with even his parentage not shown therein, which would be surprising considering that Bhag Singh had described Chamkaur Singh as his sisters' son), and with Chamkaur Singh having taken the entire blame on himself as has been projected before this court till now, the petitioner is directed to join investigation within one week and upon his doing so, in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaq Magistrate. He shall abide by the conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Illaq Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

A gazetted officer is directed to file a reply to the petition very clearing stating therein the role of the petitioner as per the investigation carried out so far.

Whether or not the interim order should be continued or not thereafter, would be dependent upon the affidavit to be filed by a gazetted officer.

Adjourned to 25.05.2021."

Thereafter the matter has been adjourned from time to time, with the petition filed by the petitioners' brother seeking a similar relief

under the provisions of Section 438 of the Cr.P.C., i.e. CRM-M No.18885 of

2021, dismissed by this court, primarily on the ground that he was the main accused who had also admitted that his brother was not to be blamed.

Today, learned counsel for the petitioner reiterates the same and submits that in view of the above, the interim order passed in favour of the petitioner may be made absolute.

Learned State counsel however points to the reply filed on behalf of the respondent-State to submit that though the petitioner had stated that he had borrowed money from his brother to repay some agricultural loan and he had thereafter returned the money upon borrowing/taking the necessary sum from his commission agent (*arhtiya*), the commission agent from whom the inquiry was made, has informed the investigating officer that no such money was borrowed from him.

Learned counsel for the complainant also submits that the petitioner and his brother both being complicit in the commission of the offence, the petitioner does not deserve to be admitted to bail.

Having considered the matter, whereas what learned State counsel and learned counsel for the complainant have contended may not be without merit, yet, with the petitioners' brother, Chamkaur Singh, having taken the entire onus on himself, and with his own petition having been dismissed and the present petitioner never having misused the

concession of interim bail, without making any comment on the merits of the case the petition is allowed, with the order dated 20.04.2021 made absolute on the same terms and conditions.

It is again reiterated that this court has not made any observation on the merits of the case and as regards the complicity of the petitioner in the commission of the offence, or otherwise, the investigation would proceed wholly on the basis of evidence led; and thereafter, naturally the trial court (if the case eventually goes to trial), would come to its own conclusion again on the basis of the evidence led before it against each accused.

November 11, 2021

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(AMOL RATTAN SINGH)**JUDGE****Whether reasoned/speaking: Yes****Whether reportable: No**