Sr.No.202

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

CRM-M-15689 of 2020(O&M)
Date of decision:28.01.2021

Amandeep Cheema

... Petitioner(s)

versus

State of Haryana

... Respondent (s)

Coram: **Hon'ble Mr. Justice Jasgurpreet Singh Puri**

Present: Mr. Tarun Vir Singh Lehal, Advocate
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

Mr. Parminder Singh, Advocate
for the complainant.

Through Video Conference

Jasgurpreet Singh Puri, J.(Oral)

Present petition has been filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner in FIR No.142 dated 29.05.2020 registered under Sections 420, 406 IPC and Section 24 of Immigration Act at Police Station Nissing, District Karnal.

As per the FIR which has been annexed as Annexure P-1 with the present case, a complaint was filed by the complainant namely, Tarandep Singh son of Baghel Singh by stating that he is 12th pass and qualified in IELTS from Karnal and obtained Five and Half Band. His father contacted with his friend namely, Waryam Singh for sending him abroad and the said Waryam Singh told his father about an agent namely, Amandeep (petitioner) resident of Zirakpur, Punjab and discussion was held by the agent with his father and asked about Rs.22 lakh for sending abroad at America. On 28.12.2018 the complainant came to the petitioner along with the documents and the petitioner took him to Patiala to an agent namely, Raja Gill. There the aforesaid Raja Gill took passport and there he contacted with the relatives of Raja Gill from Patiala. Petitioner went to Ecuador and stayed there for 20 days and the ticket which was sent to him was by Raja Gill from Ecuador to Mexico and thereafter, he left for Mexico. After his arrival at Mexico one person namely, Axcell met the petitioner to show him the photo and took him to hospital where he stayed for three days and his passport and money was taken by the aforesaid Axcell from him. Thereafter, he took the petitioner to a hotel and there 15-20 young men were there from Punjab and asked him to stay here and provided ration to them. Thereafter, the petitioner was asked to call his family members so that Rs.22 lakhs be given to Raja Gill. After the clearance of payment, he was told that he would be sent further. It is further stated in the FIR that the father of the petitioner paid Rs.22 lakhs to Raja Gill and thereafter, he was sent to America on 19.02.2019. On 21.02.2019 he was got crossed the border of America by wall through Mascali at about 8:00 PM. He was told that he should go towards right hand side and one young man will meet there who will take him to California. After scaling the wall and walking for about two hours he was nabbed by the police and after interrogation by the American police he was sent to jail. He was kept at Clasico Camp for 16 days and after that he was sent to MISSICP Camp. There his statement was recorded and passport was demanded from him and he explained the entire story thereafter, he was detained in that jail for about two months and then he was taken to Richwarld to produce before judge. On 15.08.2019 internet was not functioning so the date fixed was 19.09.2019 and the judge asked him to present his identity documents of India which he could not present and therefore the case was closed and he was told that if he wants to get arrange his identity documents then he may file his appeal. Thereafter, he was shifted to Ola City jail and on 13.01.2020 he was informed that his documents were found correct and very soon he will be repatriated to India. On 20.02.2020 (wrongly typed as 20.12.2020) passport was prepared by Indian Embassy which was received by him on 06.03.2020 for returning to India. Thereafter, because of the Corona Pandemic his flight was cancelled and on 18.05.2020 he was sent back to India by flight and on 19.05.2020 he landed at Amritsar, Punjab. Thereafter, the Haryana Police took him to Panchkula and after coming there he has not met anyone and even he has no mobile number of Raja Gill. It is further stated in the FIR that father of the complainant had given Rs. 22 lakh to agent Amandeep (petitioner), who has committed cheating with them.

Learned counsel for the petitioner has submitted that it is a case where the petitioner has been falsely implicated. Opening up his arguments, learned counsel for the petitioner has submitted that the petitioner has been labeled as an agent in the FIR whereas in fact the petitioner is a maternal uncle of the complainant (mother of the complainant is the first cousin of the petitioner). He has submitted that in fact the petitioner had advanced loan to the complainant and his father. There was financial dispute which was going on between them and due to same reason he has been implicated in the present case and without even disclosing the relationship *inter se.* He has further submitted that the petitioner is not running any kind of immigration business and he has got no office at all at any place and it was a result of financial dispute that he was implicated in the present case. He has further submitted that in fact perusal of the FIR itself would show that inconsistent statements have been made by the complainant. On the one hand, the complainant has stated that an amount of Rs. 22 lakh was paid to the petitioner and on the other hand, it is stated in the FIR itself that an amount of Rs. 22 lakhs was paid to one Raja Gill who was also an agent. In the FIR itself it has been stated that the documents were handed over to Raja Gill and not to the petitioner and if at all somebody was involved in the present case was Raja Gill and not the petitioner. He has further submitted that although the petitioner has gone abroad by way of false methods, the complainant has implicated the petitioner in order to put pressure upon the petitioner with regard to the pending financial loans.

Learned counsel has further submitted that even going by the allegations contained in the FIR it has come to light that petitioner was arrested on 21.02.2019 in United States of America(USA) and as per Annexure P-4 an amount of Rs.2,73,000/- has been credited in the name of the petitioner on 14.03.2019 which is after the arrest of the complainant in USA and thereafter, another amount of Rs.42,000/- was credited in the name of the petitioner on 26.08.2019 which was also after long span of time after the arrest of the complainant in USA. He has submitted that the amount was transferred for the purpose of repayment of loan and it had got no connection with the allegations that the petitioner had sent the complainant to abroad. Even otherwise, if the complainant got arrested in USA on

21.12.2019 then there was no occasion thereafter, for payment of money to the petitioner in that regard and therefore, the entire story put forward by the prosecution was falsified on this account. He has further submitted that the petitioner has got nothing to do with such kind of activity and perusal of the FIR would show that the main accused if any was Raja Gill whom the police has not even arrested till date for the best reasons known to them.

Learned counsel for the petitioner has further submitted that even otherwise also, as per the allegations made by the complainant himself, he had gone to USA by way of illegal methods and was routed through different countries to reach USA and at one place even as per FIR he had scaled wall and was sent to jail for some time and thereafter, sent to India. He has submitted that person who has gone to the USA by way of illegal method can not turn around and say that since he has paid money to somebody, the same should amount to cheating or the same should be recovered by the police. He has submitted that even otherwise also under civil law, such kind of an express or implied contract is void *ab initio.* Learned counsel for the petitioner has further submitted that in fact action should be taken against the complainant for such kind of illegal activities by which he left India in an unlawful method and ultimately, landed in jail in America. Learned counsel has further submitted that even assumingly that such kind of breach of contract was legal, the same would amount to civil dispute and the complainant can file a suit for recovery in accordance with law. He has further submitted that petitioner has also filed a civil suit for recovery against the complainant and his father with regard to the loan of money which he had advanced to them and which is pending in the Civil Court.

Learned counsel has further submitted that the present case is a case triable by Magistrate and the petitioner has joined the investigation in pursuance of directions issued by this Court on 18.06.2020. He has further submitted that even as per the directions of this Court, a questionnaire was given to the petitioner which he has answered to 52 points which were posed to him by the Investigating Officer. He has further submitted that even the police is conniving with the complainant and harassing the petitioner for a matter in which the petitioner was falsely implicated. He has further submitted that instead of taking action against Raja Gill, the police is wanting to arrest the petitioner in a case where he was not involved. He has further submitted that it is a settled law that criminal prosecution can not be made a process for recovery of money and has therefore, prayed for grant of anticipatory bail.

Per contra learned State counsel has submitted that direct allegations have been attributable to the petitioner as per FIR and he has taken an amount of Rs. 22 lakhs from the complainant. He has submitted that Rs.2,73,000/- was taken on 14.03.20019 by way of a bank transfer whereas Rs.2,00,000/- was taken by cash in October, 2019 and thereafter, Rs.17,25,000/- again in cash and total amounting to Rs. 22,40,000/-. He has further submitted that matter is at investigation stage and the petitioner has not cooperated with the investigation process by not returning the aforesaid amount. Learned State counsel has further submitted that he has not even co-operated in giving the address and details of the other co-accused namely, Raja Gill and therefore, has opposed the grant of anticipatory bail to the petitioner.

Learned counsel for the complainant has argued that as per the orders passed by this Court on 18.06.2020, the petitioner had stated that he was not involved in any other case of similar nature and it was also directed that criminal case of like nature found to be registered against the petitioner, anywhere, then the interim order would be vacated. He has submitted that another FIR No.284 dated 12.09.2020 which is a case of similar nature was registered against the petitioner and therefore, has prayed for dismissal of the present anticipatory bail. He has further submitted that an amount of Rs.22 lakhs is yet to be recovered from the petitioner and therefore, anticipatory bail may not be granted to him.

Answering to the argument raised by learned counsel for the complainant, it has been answered by learned counsel for the petitioner that the aforesaid FIR No.284 dated 2.09.2020 was lodged after the interim direction was passed by this Court on 18.06.2020 and therefore, at the time of passing of the order dated 18.06.2020 the petitioner had made correct statement. He has further submitted that so far as the aforesaid FIR is concerned the same was lodged in a similar fashion by another person namely, Gurkirat Singh, who is also a cousin of the complainant and in that case also the petitioner has been falsely implicated and ultimately the matter was amicably settled on the basis of compromise between the parties, FIR has been quashed by this Court in CRM-M-29123 of 2020 on 14.12.2020 and therefore, argument raised by learned counsel for the complainant would pale into insignificance.

I have heard the learned counsel for the parties.

So far as the arguments raised by learned counsel for the respondent that the petitioner is involved in some other case also the same would be of not any significance in view of the fact that the said FIR was lodged after the order dated 18.06.2020 and the same has now been quashed by this Court. As per the prosecution story the complainant was sent abroad and he had allegedly paid Rs.22 lakhs but to whom he has paid is not clear from the FIR itself. At one place, it is stated in the FIR that this amount was paid to the petitioner whereas at another place it is stated that the same was paid to one Raja Gill. Similarly, the mode of payment as alleged by the learned State counsel was by cash an amount of Rs.19,25,000/- and the remaining amount of Rs.2,73,000/- was by transferring by way of account. So far as the payment made by cash is concerned the same would also be subject matter of trial if any but at the time of deciding the anticipatory bail transfer of amount by cash would not be of much significance. So far as the remaining amount of Rs.2,73,000/- is concerned the same was admittedly paid on 14.03.2019 vide Annexure P-4 which was paid after the arrest of the complainant in USA and therefore, at this stage, would not raise any presumption in favour of complainant. Furthermore, learned counsel for the petitioner has submitted that the transfer of money of Rs.2,73,000/- was for the purpose of return of loan amount and for which he has also filed a civil suit for recovery which is still pending in the Civil Court.

One of the important aspects involved in the present case is that the complainant had gone abroad by way of an illegal method and routed through different countries and thereafter, he was arrested and sent to jail in USA and thereafter, repatriated to India. Therefore, argument raised by learned counsel for the complainant and the State that an amount of Rs.22

lakh is yet to be recovered may also not sustain at this stage. The object of payment of money, if any could be for unlawful purpose. Furthermore, criminal prosecution is not to be adhered to for the purpose of recovery of money and especially in such like circumstances where the allegation is that the alleged money was paid for the purpose of sending abroad by way of illegal methods. So far as the argument raised by the learned State counsel that custody of the petitioner is required for the purpose of giving details of the co-accused Raja Gill would also be of much significance in view of the fact that it is the responsibility and duty of the State Police to locate an accused and State police can not be solely dependent upon another co-accused for that purpose especially in view of the fact that as per the prosecution story it is not even clear that as to whom the alleged amount was paid and also the purpose for which the amount was paid. The State had been taking a stand that the petitioner was not co-operating with the investigation process despite interim anticipatory bail granted to the petitioner by this Court on 18.06.2020. However, on 01.10.2020 the petitioner was directed to appear before the investigating officer on 05.10.2020 with a direction that the Investigation Officer shall supply a questionnaire if so desired and in case questionnaire is supplied, then the petitioner shall give an answer to the same within a period of 10 days thereafter. Learned counsel for the petitioner has submitted that the petitioner has answered all the 52 questions raised by the Investigating Officer and the learned State counsel has not disputed the same. The argument raised by learned State counsel that custody of the petitioner is required for the purpose of recovery of money and for getting the location of the other co-accused would not sustain in view of the facts and the circumstances of the present case. It is a settled law that the Court while considering the grant of anticipatory bail has to consider the right of liberty on the one hand and the other factors namely, the probability of the petitioner that he may influence any witness or tamper with the evidence or flee from justice etc. are to be considered. In the present case, which is triable by a Magistrate wherein it is not the case of the State that in case the petitioner is granted anticipatory bail then he may flee from justice or tamper with evidence, the arguments raised by learned counsel for petitioner has merit.

Therefore, considering the totality of the circumstances of the present case, this Court deems it fit and appropriate to grant anticipatory bail to the petitioner. Consequently, the order dated 18.06.2020 is made absolute.

However, the petitioner shall join the investigation as and when required or directed by the Investigating Officer. Petitioner shall also abide by the conditions as provided under Section 438(2) Cr.P.C. It is further directed that the petitioner shall surrender his passport, if any to the Investigating Officer within a period of one week from today.

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

28th January, 2021 **[JASGURPREET SINGH PURI]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether Reportable Yes/No