

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

(1) CRM-M-22352-2020 (O&M)
Date of decision: 27.01.2021

Narinder Kaur

...Petitioner

Versus

State of Punjab

...Respondent

(2) CRM-M-28809-2020 (O&M)
Date of decision: 27.01.2021

Avtar Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Vipin Mahajan, Advocate for the petitioner(s).

Mr. Saurav Khurana, DAG, Punjab.

Mr. Rajesh Kapila, Advocate for the complainant.

H.S. MADAAN, J. (Oral)

Case taken up through video conferencing.

These petitions for pre-arrest bail under Section 438 Cr.P.C. have been filed by petitioners Narinder Kaur and Avtar Singh, both of them being accused in FIR No.111 dated 25.07.2020, for offences under Sections 420, 120-B IPC and Section 13 of Punjab Travel Professional (Regulation) Act, registered with Police Station Tibber, District

Gurdaspur.

Briefly stated the prosecution version is that, Avtar Singh petitioner in CRM-M-28809-2020, his wife Narinder Kaur, petitioner in CRM-M-22352-2020 as well as their daughter Navneet Kaur had given an allurement to complainant Gurwinder Singh son of Narinder Singh, R/o Village Bhumbli, Gurdaspur of his migration to America on payment of Rs.25 lacs to them by the complainant; the deal was struck at Rs.20 lacs with Rs.10 lacs to be paid in advance and Rs.10 lacs on complainant reaching America; the accused had received Rs. 10 lacs from the complainant but they could neither ensure his migration to America nor returned the amount of Rs.10 lacs received by them from the complainant; on matter being reported to the police by the complainant Gurwinder Singh, formal FIR was recorded.

Apprehending their arrest in this case, petitioners had approached the Court of Sessions at Gurdaspur by moving separate applications seeking pre-arrest bail. Their such applications were assigned to Addl. Sessions Judge, Gurdaspur, who dismissed such application moved on behalf of Narinder Kaur, vide order dated 04.08.2020 and that of Avtar Singh, vide order dated 11.09.2020. Feeling aggrieved, they have approached this Court by way of filing the present petitions, praying for grant of similar relief, which are being resisted by the State counsel and counsel for the complainant.

I have heard learned counsel for the parties besides going through the record and I find that both the petitions are doomed for failure. The allegations against both the petitioners are very grave and

serious of duping an innocent person of his hard earned money to the tune of Rs.10 lacs, by giving him allurement of his migration to America without actually doing so or returning the amount to him. The involvement of both the petitioners in the scam comes out to be there. As per allegations in the FIR, the complainant had given a sum of Rs.5 lacs to Avtar Singh and his wife at his residence in the presence of his family members and one Dalbir Singh resident of Village Bhumbli. He had also given photocopies of his passport to them and then Avtar Singh after counting the money handed over the same to his wife Narinder Kaur, who put the money in her purse. Therefore, it cannot be said that Narinder Kaur has no role to play in the scam and she has been involved simply for the reason of her being wife of Avtar Singh as a pressure tactic. Another amount of Rs.5 lacs is alleged to have been paid by complainant to Avtar Singh in May 2016 in the presence of his daughter Navneet Kaur. In February, 2019, Avtar Singh is said to have given a cheque to the complainant in the sum of Rs.10 lacs drawn on Yes Bank from his bank account for the reason that he could not arrange visa for the complainant. That cheque is said to have bounced showing the mala fide intention of Avtar Singh. If the accused had not received Rs.10 lacs from the complainant, there was no occasion for Avtar Singh to issue cheque in that amount in favour of the complainant, which is said to have bounced on account of there being insufficient funds therein and on account of different signatures, that points out towards accused having received a sum of Rs.10 lacs from the complainant as alleged in the FIR.

Learned counsel for the petitioner(s) has raised plea of there being delay of 4½ years in registration of the FIR. While deciding the question with regard to entitlement of the petitioners to grant of anticipatory bail, such type of objections do not merit much attention. It is concern and function of the trial Court to deal with such like aspects. This plea may have some relevance during the trial but not at this stage, when the entitlement of the petitioners to grant of anticipatory bail is under consideration. Before the Court of Sessions, a plea had been raised on behalf of petitioners that Avtar Singh had raised a loan of Rs.10 lacs from the complainant and issued cheque to him, which did not get cleared. That story also does not seem to be convincing. It was stated there that petitioners were ready to return the amount and in the present proceedings also, when petition for pre-arrest bail filed by Narinder Kaur came up for hearing on 11.08.2020, counsel for the petitioner had contended that petitioner was ready to return the amount of Rs.5 lacs to the complainant within a period of 02 months from that date, subject to final outcome of criminal litigation. Considering that plea, notice of motion was issued and interim bail was granted to the petitioners. Though, the petitioners are said to have joined the investigation but as informed by the State counsel, they have not rendered full cooperation and have not got the amount received by them from the complainant recovered. The amount of Rs.5 lacs has not been deposited within a period of 02 months, though counsel for petitioner-Narinder Kaur had categorically stated so before this Court on 11.08.2020 and it is so

recorded in the interim order of that date. It shows that petitioners can make commitment and then back out of that and they are trying to be somewhat over clever inasmuch as they do not hesitate in giving wrong undertaking before this Court to get the concession. Such type of conduct needs to be viewed with all the seriousness, dis-entitling the petitioners to grant of discretionary equitable relief of pre-arrest bail. The custodial interrogation of the petitioners is necessary for complete and effective investigation to unfold the complete story as to how the scam was planned and executed, the persons who had taken part therein, the recovery of amount of Rs.10 lacs received by the accused from the complainant is also to be got effected. In case, custodial interrogation is denied to the investigating agency that shall leave many glaring loopholes and gaps, adversely affecting the investigation, which is uncalled for. The petitioners/accused cannot be allowed to take shelter behind the plea that complaint under Section 138 of the Negotiable Instruments Act filed by the complainant against the accused Avtar Singh is already pending before JMIC, Gurdaspur. Those are separate proceedings and petitioners cannot get any benefit out of that, by default. They are to answer for their own criminal acts. Keeping in view the facts and circumstances of the case, no case for grant of pre-arrest bail is made out. The petitions so filed by the petitioners are dismissed. However nothing discussed above shall have any bearing on the merits of the case.

27.01.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No