

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 16.11.2021

(1) CRM-M-31076-2021 (O&M)

Surinder Kaur and anotherPetitioners

vs.

State of Haryana and anotherRespondents

(2) CRM-M-35451-2021 (O&M)

Lakhbir KaurPetitioner

vs.

State of Haryana and anotherRespondents

CORAM: - HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: - Mr. Rajinder Singh Rana, Advocate,
for the petitioners.

Mr. Neeraj Poswal, AAG, Haryana.

Lt. Col. P. K. Sara, Advocate,
for respondent No. 2 in each petition.

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Amol Rattan Singh, J. (ORAL)

These two petitions having been clubbed together, in
CRM-M-31076-2021, the following order was recorded on
05.08.2021 by this Court : -

“The case has been taken up for hearing through
video conferencing.

The petitioners have filed this petition under
Section 438 of the Code of Criminal Procedure, 1973 for
grant of anticipatory bail in case FIR No.86 dated
07.06.2021 registered under Sections 120-B, 406 and 420
of the Indian Penal Code, 1860 at Police Station Barara,
District Ambala.

Learned Counsel for the petitioners has submitted that the petitioners have been falsely implicated in the case. There is undue and unreasonable long delay of about nine years in lodging of the FIR. The petitioners did not make any fraudulent representation and did not make any dishonest inducement to the complainant. The petitioners did not receive any amount from the complainant and were not beneficiary of the transactions in any manner. The petitioners are ready to join the investigation and their custodial interrogation is not required in the matter.

Notice of motion.

Pursuant to supply of advance copy, Mr. Sumit Jain, Addl. A.G. Haryana has appeared and accepted notice on behalf of the respondent-State.

Learned State Counsel seeks time to file reply.

Adjourned to 25.10.2021.

Notice to respondent No.2 be issued for that date and notice be also given dasti, if so desired.

In the meanwhile, the petitioners-Surinder Kaur and Gurbinder Kaur are directed to join the investigation as and when called upon to do so. In the event of their arrest, the petitioners shall be released on interim anticipatory bail by the arresting officer/investigating officer on furnishing of bail bonds by them to the satisfaction of the arresting officer/investigating officer. The petitioners shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which they shall not be entitled to the protection of interim anticipatory bail allowed to them”.

Thereafter on 25.10.2021, upon learned counsel for the complainant submitting that the petitioners were in the process of fleeing the country with the prime accused, i.e. Paramjit Singh, having already left the country, this Court had directed the petitioners to surrender their passports, and as recorded in the next order passed

on 02.11.2021, an affidavit of the Additional Superintendent of Police, Ambala, had been filed, stating to the effect that Gurvinder Kaur (petitioner No. 2 in CRM-M-31076-2021) and Lakhbir Kaur (petitioner in CRM-M-35451-2021) had surrendered their passports and that Surinder Kaur had submitted an affidavit stating that she does not have a passport.

Consequently, the Additional Superintendent of Police had been directed to file another affidavit after verifying as to whether she has been issued a passport or not; and today Mr. Neeraj Poswal, learned Assistant Advocate General, Haryana, has filed affidavits of the said officer, dated 15.11.2021, stating to the effect that as per a communication received from the Regional Passport Office, Chandigarh, Surinder Kaur indeed does not have a passport as per the computer data base in the Passport Office.

The aforesaid affidavits filed (one in each petition) are ordered to be taken on record.

Learned counsel for the petitioners has submitted that the FIR itself is delayed by 09 years, the initial agreement allegedly having been entered into the year of 2012 and money having allegedly been paid over a period of number of years thereafter and consequently it would not be maintainable and it has only been filed on account of some land disputes between the parties, as Paramjit Singh is the brother of the complainant, Gurcharan Singh.

Learned counsel for the petitioners has further submitted that in fact the co-accused of the petitioners, i.e. Paramjit Singh, is the brother of the complainant.

Learned counsel for the complainant, on the other hand, submits that Rs. 38 lakhs were transferred over a period of time by bank transactions and Rs. 20.00 lacs was paid, in cash and consequently with no civil dispute shown to be filed in any court, the story given on behalf of the petitioners is only to try and ensure that these petitions are allowed.

It is to be noticed that other than the reply filed by the complainant, even as per the replies/affidavits filed on behalf of the respondent-State, it has been stated that various amounts were found to have been transferred by the son of the complainant between the years 2013 and 2015 to one or the other petitioners in these petitions, with the total amounting to Rs. 38,16,468/-.

Having considered the matter, as regards the delay in lodging of the FIR, other than the fact that learned counsel for the complainant has alleged that the Investigating Officer was initially in conclusion with the accused with the prime accused who has already left the country due to that fact (with no comment made on that allegation at all by this court), yet, when admittedly one of the accused is the brother of the complainant, the delay in lodging the FIR, at least for the purpose of these petitions, can be well understood.

Thus, without making any further comment on the merits of the case, these petitions are dismissed with the interim orders passed in favour of the petitioners hereby vacated.

However, nothing stated in the orders passed in these petitions would affect the merits of the case, with the investigation to continue as per the evidence gathered and if matter goes to trial, naturally the trial court would also proceed wholly on the basis of the evidence led before that court.

It is however to be observed by this court that even though no suit for recovery may be maintainable on account of any limitation (with again this court not commenting on the merits of that contention of the petitioners), the punishment provided for the commission of the offences alleged to have been committed being more than 03 years, the bar contained under the provisions of Section 468 of the Cr. P.C., would obviously not apply.

(A photocopy of this order be placed on the file of the connected case.)

(AMOL RATTAN SINGH)
JUDGE

16.11.2021

preeti	
whether speaking/non speaking	yes
whether reportable/non reportable	yes