

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-31028-2021

Date of decision : 25.10.2021

Sunita Walia

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.IPS Kohli, Advocate
for the petitioner.

Mr.N.K.Banka, DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is the first petition filed under Section 438 of the Cr.P.C. seeking grant of anticipatory bail in FIR no.5 dated 11.01.2020 registered under Sections 420, 380 and 120-B IPC at Police Dakha, Ludhiana, District Ludhiana Rural.

Learned counsel for the petitioner has submitted that in this case the petitioner is an old lady of 75 years and has been roped in only because she is the mother of Jaswinder Pal Singh Walia with whom, as per learned counsel for the petitioner, there were some dealings of the complainant. It is further submitted that even as per the FIR, the alleged inducement is only attributed to Jaswinder Pal Singh Walia and not to the petitioner and thus an offence under Section 420 IPC would not *prima-facie* be made out against the petitioner. It is also submitted that in fact the

of the complainant and even the version of the complainant to the effect that the petitioner had come to the house of the complainant and had taken the so called agreement dated 04.06.2012 with her, without disclosing it to the complainant, is a completely false plea inasmuch as no such agreement was executed by the petitioner in favour of the complainant. It is submitted that in fact the complainant had filed a civil suit against the petitioner and other persons. Reference has been made to the order passed in the said suit dated 24.06.2020, as per which no ad-interim injunction was granted to the complainant. The order dated 24.06.2020 is reproduced hereinbelow:-

“Suit received by entrustment. Report of Reader seen. It be checked and registered.

Along with suit an application under Order 39 Rule 1 and 2 CPC is also filed. Heard. Documents perused. After hearing the learned counsel for plaintiff and going through the documents on record, I do not deem it appropriate to grant ad interim injunction before hearing the other party. As such, let notice of suit as well as stay application be issued to defendants for 02.07.2020 through ordinary process and through BNPL service of postal department on payment of requisite charges and copies of plaint, along with the copy of this order. Dasti summons be issued if requested.”

Learned counsel for the petitioner has submitted that a civil dispute has been given a criminal colour and only to put pressure on the petitioner, the present FIR has been got registered. It is further submitted that the petitioner is ready to cooperate with the investigation and thus, has

prayed that the present petition be allowed.

On the contrary, learned State counsel has opposed the present anticipatory bail petition and has submitted that in the present case the involvement of the petitioner is *prima-facie* proved from the fact the cheque dated 12.10.2018 for an amount of Rs.35 lacs was issued by the petitioner and the petitioner is also involved in three other FIRs and thus, she is a habitual offender.

Learned counsel for the petitioner in rebuttal has submitted that the petitioner has not issued any cheque in favour of the complainant at any rate and the complaint under Section 138 of the Negotiable Instruments Act 1881 (in short 'the Act') has already been filed by the complainant and in fact the registration of the present FIR would result in prosecution for the same alleged offence twice. It is further submitted that the petitioner would take up all the pleas available to her in the trial under Section 138 of the Act. With respect to the petitioner being involved in other cases, it is submitted that in the said cases also, the petitioner has been falsely involved. Reliance has been placed upon judgment of Hon'ble Supreme Court of India in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”, 2012 (2) SCC 382*** to contend that the facts in the present case are to be seen so as to ascertaining whether the petitioner deserves concession of bail or not. The relevant portion of said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in

the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard learned counsel for the parties.

The petitioner is a 75 year old lady. It is not in dispute that the complainant had filed a civil suit arraying the petitioner as a party and vide order dated 24.06.2020, ad-interim injunction was not granted to the complainant. Even as per the version in the FIR, it was the said Jaswinder Pal Singh Walia, who had offered the complainant to join them as a co-partner and thus, *prima-facie* there is no fraudulent inducement on behalf of the petitioner as has been alleged and thus, it would be a matter of debate during the trial as to whether the offence under Section 420 IPC is made out against the petitioner or not. A perusal of the FIR would also show that it has civil tappings and the entire matter would finally be adjudicated by the civil Court where the civil suit filed by the complainant is pending. The petitioner has undertaken to cooperate in the investigation and also comply with all the conditions as ensured under Section 438(2) Cr.P.C. Moreover, in the present case, custodial interrogation of the petitioner is not required as the entire dispute is based upon documents / record.

Keeping in view the abovesaid facts and circumstances, the present petition is allowed and in the event of arrest, the petitioner shall be released on bail subject to furnishing personal bonds and surety to the satisfaction of Arresting / Investigating Officer and further subject to the fact that she is not required in any other case. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) of Cr.P.C.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

October 25, 2021
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No