

CRM-M-33741-2021 (O&M)

Through video conference
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-M-33741-2021 (O&M).
Decided on: November 03, 2021.

Sumit Mehta and another

.. Petitioners

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

PRESENT

**Mr.Sanjeev Manrai, Sr. Advocate, with
Mr.Sukhwinder Singh Kamboj, Advocate,
for the petitioner.**

Mr.Naveen Singh Panwar, DAG, Haryana.

**Mr.Gurvinder Singh Sidhu, Advocate,
for the complainant.**

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure, for the grant of anticipatory bail in FIR No.172 dated 16.7.2018, under Sections 420, 120-B/34 IPC, registered at Police Station Ellenabad, District Sirsa.

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As per the FIR which was lodged in the year 2018 i.e. almost three years back regarding an incident occurred three years earlier, one Sudesh Bala had taken an amount of Rs.11 lacs from the complainant on the pretext of sending her son abroad but neither the same has not been returned back nor the son of the complainant has been sent abroad.

Learned senior counsel for the petitioner has submitted that so far as the present two petitioners are concerned, they were not at all connected with the subject matter of the present case and in fact, the petitioners themselves had lodged an FIR against the aforesaid Sudesh Bala about three years ago and they themselves are the victim at the hands of aforesaid Sudesh Bala and rather they had also given Rs.18 lacs which were not returned. He has further submitted that some amounts were transferred in the name of the petitioners from the account of the complainant but that was in lieu of the amount which was to be returned back by Sudesh Bala to the petitioners and they were not aware that the amount was transferred from the account of the complainant to the account of the petitioners and the said transaction would not raise any presumption against the petitioners. Learned senior counsel has further submitted that the petitioners are not involved in any such activity of immigration or VISA and they, in fact, are having tiles business in Delhi and there is no other case against the petitioners. He has further submitted that otherwise also a civil dispute has been given criminal flavour in the present case so far as the petitioners are concerned. He has further submitted that in pursuance of the orders passed by this Court on 19.8.2021 whereby the petitioners were granted interim

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protection by this Court, they have already joined the investigation and have fully cooperated with the investigation process and are not required for custodial investigation and therefore, he has prayed that order dated 19.8.2021 qua the petitioners be made absolute.

The learned State counsel has submitted that reply by way of affidavit of Deputy Superintendent of Police, Ellenabad, District Sirsa, has been filed. Since the matter is being taken up through video conference, a print out of the same is taken on record. Learned State counsel has submitted that as per the affidavit so far as the petitioners are concerned, they have joined the investigation on 3.9.2021 in compliance of the orders passed by this Court and were released on interim bail. However, as per the affidavit the petitioners have not fully cooperated with the investigation process since the amount has not been recovered from them.

Learned State counsel today, on instructions from SI Dharambir has stated that a questionnaire was put to the petitioners at the time of joining of investigation and they have answered the questionnaire but the amount has not been recovered from them.

Mr.Gurvinder Singh Sidhu, Advocate, who has appeared for the complainant has submitted that the petitioners have taken an amount of Rs.6 lacs from the complainant and have not returned the same and therefore, their custodial investigation would be required in the present case and therefore, has opposed the grant of anticipatory bail to the petitioners.

I have heard the learned counsel for the parties.

In pursuance of the order passed by this Court on

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19.8.2021, the petitioners have joined investigation as per the learned State counsel and also as per the affidavit filed by the State and the petitioners have also answered the questionnaire put by the investigating officer to the petitioners. However, the only issue which remains to be considered is with regard to the recovery of the amount which is allegedly transferred by the complainant in the name of the petitioners.

In the present case, the allegations against the petitioners are that they have taken some amount from the complainant along with Sudesh Bala for sending the son of the complainant abroad. However, it appears that the main accused in the present case was Sudesh Bala against whom, as per the learned counsel for the parties, number of cases are still pending. It is the case of the petitioners that the petitioners themselves are the victim of aforesaid Sudesh Bala and had also lodged an FIR against her for alleged misappropriation of Rs.18 lacs which she has taken from the petitioners. So far as compliance of interim order dated 19.8.2021, passed by this Court granting interim protection to the petitioners is concerned, it is the stand of the State that they have joined the investigation and have answered the questionnaire put to the petitioners. The non-recovery of the amount of Rs.6 lacs from the petitioners cannot become a ground for denial of anticipatory bail to the petitioners as the police cannot become recovery agent. Furthermore, admittedly there is no other case against the petitioners and it is not the stand of the State that in case the petitioners are granted anticipatory bail then they may influence any witness or tamper with evidence or may flee from justice.

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Therefore, considering the totality of the circumstances of the present case, I deem it fit and proper to allow the present petition. Accordingly, the present petition is allowed and interim order dated 19.8.2021, is hereby made absolute.

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

November 03, 2021.	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No