

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201)

CRM-M-32145 of 2020 (O&M)
Date of Decision: 23.02.2021

Jimmy Mittal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. S.S. Kainth, Advocate, for the petitioner.
Mr. Sidakmeet Singh Sandhu, AAG, Punjab
Mr. Rajwant Kaur, Advocate, for respondents no.2 to 4

Amol Rattan Singh, J. (Oral)

Case heard by way of video conferencing.

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of ‘anticipatory bail’, upon FIR no.92, dated 21.08.2020, having been registered at Police Station Mulepur, District Fatehgarh Sahib, alleging therein the commission of offences punishable under Sections 406/420/201 of the IPC and Section 13 of the Punjab Travel Professionals (Regulation) Act, 2014.

On 12.10.2020, the following order had been passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition, the petitioner seeks the concession of anticipatory bail, upon FIR no.92, dated 21.8.2020, having been registered at Police Station Mulepur, District Fatehgarh Sahib, alleging therein the commission of offences punishable under Sections 406/420/201 of the IPC, and under Section 13 of the Punjab Travel Professionals (Regulation) Act, 2014.

Learned counsel for the petitioner submits that in fact the entire case against the petitioner has been concocted at the instance of one Balwant Singh with whom the petitioner has a land dispute, and in fact he

has instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881, against Balwant Singh, in the competent court at Patiala.

Notice of motion.

Mr.Amit Mehta, learned Sr.DAG, Punjab, accepts notice at the asking of the court.

Upon specific query to him, he submits that there is no other criminal case pending against the petitioner, as per his instructions.

Though he submits that the petitioner has been indicted in an enquiry conducted by a gazetted officer, he does not have the details thereof as regards the basis of the indictment (with regard to actual evidence gathered during investigation, other than the allegations made).

That being so, without making any comment on the actual merits of the case at this stage, the petitioner is directed to join investigation and upon him so joining if he is sought to be arrested, he shall be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the investigating officer does not actually join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation, in terms of the order of this court.

Adjourned to 23.11.2020.

The complainants in the FIR, i.e. Parkash Singh son of Gurmel Singh, resident of Village Tanna, Tehsil and District Fatehgarh Sahib, Sohan Singh son of Jarnail Singh, resident of Village Halotali, Tehsil and District Fatehgarh Sahib, and Raju Singh son of Gurbakhsh Singh, resident of Village Dandoian, Tehsil and District Patiala, are ordered to be impleaded as respondents no.2, 3 and 4 respectively in the petition, with the Registry directed to carry out the necessary corrections in the memo of parties.

Notices be issued to respondents no.2, 3 and 4, returnable on the adjourned date, i.e. 23.11.2020.”

Thereafter, on 23.11.2020, the following order had been passed:-

“All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

Despite the order dated 12.10.2020, directing the petitioner to join investigation, learned State counsel submits that as per his instructions, he has joined such investigation only on 17.11.2020.

Learned counsel appearing for respondents no.2 and 3 submits that in fact the petitioner had issued a cheque dated 07.08.2019 for an amount of Rs.8,70,000/- drawn on the Syndicate Bank, Patiala Branch, which was dishonoured on account of an insufficient balance in the petitioners' account.

She further submits that the said respondents have a transcript/recording of the telephone conversation between the petitioner and respondents no.2 and 3, which she would place on record to show that the petitioner had in fact taken money for the purpose of sending respondents no.2 to 4 abroad.

A gazetted officer is directed to file a reply as regards the investigation carried out, keeping in view the aforesaid contentions raised.

(It is to be noticed that respondent no.4 stands served of the notice issued to him but there is no representation on his behalf today at least.)

If such recording is placed on record by counsel for respondents no.2 and 3, it is made clear that the onus would be on the petitioner, at least for the purpose of this petition seeking anticipatory bail, to either make good the amount of the cheques stated to have been issued by the petitioner, failing which I would see no reason to entertain this petition any further.

Naturally upon respondents no.2 and 3 filing such application, the petitioner would be at liberty to file a counter thereto if he wishes to, within a reasonable period.

Adjourned to 17.12.2020.

Interim order to continue till that date only and specifically.”

On 17.12.2020, an application had been filed by the counsel for respondents no.2 to 4, seeking to place on record the conversation between the petitioner and respondents no.2 and 3, with notice issued and the

matter adjourned to 29.01.2021. On that date, the following order had been passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

On 23.11.2020, the following order had been passed:

“All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

Despite the order dated 12.10.2020, directing the petitioner to join investigation, learned State counsel submits that as per his instructions, he has joined such investigation only on 17.11.2020.

Learned counsel appearing for respondents no.2 and 3 submits that in fact the petitioner had issued a cheque dated 07.08.2019 for an amount of Rs.8,70,000/- drawn on the Syndicate Bank, Patiala Branch, which was dishonoured on account of an insufficient balance in the petitioners' account.

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If such recording is placed on record by counsel for respondents no.2 and 3, it is made clear that the onus would be on the petitioner, at least for the purpose of this petition seeking anticipatory bail, to either make good the amount of the cheques stated to have been issued by the petitioner, failing which I would see no reason to entertain this petition any further.

Naturally upon respondents no.2 and 3 filing such application, the petitioner would be at liberty to file a counter thereto if he wishes to, within a reasonable period.

Adjourned to 17.12.2020.

Interim order to continue till that date only and specifically.”

Today, this application (CRM-30662-2020) has been filed seeking to place on record a transcript/a recording of the conversation referred to by learned counsel for respondents no.2 to 4 on the last date of hearing.

Notice in the application, with Mr. Kainth accepting notice on behalf of the non-applicant/petitioner.

Learned State counsel accepts notice at the asking of the court.

No reply on behalf of the State having been filed so far, naturally a reply now be filed to the petition by a gazetted officer, taking into consideration the recording filed today by learned counsel for applicants/respondents no. 2 to 4.

Adjourned to 29.01.2021.

Interim to continue till that date only.”

Thereafter, on 12.02.2021, the following order had been passed reproducing therein the earlier order passed on 29.01.2021:-

“Case heard by video conference.

The petitioner having been admitted to interim bail on 12.10.2020, on 29.01.2021, the following order had been passed:-

“Case heard via video conferencing.

Learned State counsel would go through the affidavit of the DSP properly and take instructions specifically with regard to who issued the cheque dated 07.08.2019, for an amount of Rs. 8,70,000/- (drawn on the Syndicate Bank, Patiala Branch), that is, as to whether it was the petitioner or it was some Balwant Singh, as learned counsel for the petitioner is contending.

Adjourned to 12.02.2021.

Interim order to continue, till the next date of hearing only and specifically.

It is also made clear that any request for an adjournment made by learned counsel for the petitioner will result in immediate vacation of the interim order with no further order required to be passed in that regard.”

Today, learned State counsel as also counsel for the complainant submit that the in fact the cheque in question was a payees' account cheque in the name of respondent no.2, Parkash Singh, and was consequently deposited in his account for encashment thereof from the petitioners' account but with the said cheque having been dishonoured.

Learned counsel for the petitioner however reiterates that because respondents no.2 to 4 are in cultivating possession of the land which the petitioner had taken on lease from one Balwant Singh, he had executed that cheque by way of paying the lease money and therefore he cannot be accused of having defrauded the petitioner in the manner as depicted in the FIR.

He further submits that the petitioner is willing to deposit in court, half the amount of money due to the complainant immediately; and would take instructions as to whether the petitioner is willing to also deposit the remaining half within some reasonable time (though he submits that presently the petitioner is willing to deposit only half the money as is alleged to be due from him, just to prove his bona fides).

Adjourned to 23.02.2021.

The lease deed in question be placed on record within 5 days positively after a true translation thereof, by way of a proper application in that respect; with the petitioner to also file an affidavit alongwith as regards his contentions in the context of the lease deed.

Interim order to continue till that date only and specifically, with it again reiterated that any request for an adjournment by counsel for the petitioner on that date would result in immediate vacation of the interim

order.”

Today learned counsel for the petitioner submits that, firstly, as regards the lease deed that is sought to be relied upon by the petitioner, he does not have a copy of any such deed and therefore he does not press that issue; and as regards the amount that he is willing to deposit to prove his bona fides, the petitioner can only deposit half the amount as he does not have the entire amount.

He further submits that the petitioner is only willing to deposit half the amount in court and will not pay it to the complainant, with that amount to be released to the complainant only subject to the outcome of the trial against the petitioner.

It is to be noticed again that this is a petition by which the petitioner he seeks to be admitted to ‘anticipatory bail’, and upon query to learned State counsel, he has submitted that in fact the matter is still being investigated, with a report under the provisions of Section 173 of the Cr.P.C. not having been submitted to the competent court.

That being so and looking at the entire circumstances, including the petitioner first wished to rely upon a lease deed which he cannot produce today, without making any comment on the merits of the case, I find no reason to entertain this petition any further, which is consequently dismissed, with the interim order dated 27.10.2020, granting interim bail to

the petitioner, hereby vacated.

Naturally, this order and the previous ones have been passed in the context of a petition filed under the provisions of Section 438 of the Cr.P.C. and consequently nothing stated in the said orders would be taken to be a comment on the merits of the case, with the guilt/innocence of the petitioner to be established wholly on the basis of evidence gathered and led.

23.02.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No