

203

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

CRM-M No. 32490 of 2020
Date of Decision: 19.01.2021

Nitin Goyal @ Nitin Goel

-Petitioner

Vs

State of Haryana, Department of Home Affairs

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Tarun Singla, Advocate,
for the petitioner.

Mr. Anant Kataria, D.A.G., Haryana.

Mr. S.S. Sahu, Advocate,
for the complainant.

RAJ MOHAN SINGH, J. (ORAL)

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

Petitioner seeks grant of anticipatory bail under
Section 438 Cr.P.C. in case bearing FIR No.17 dated
15.01.2020 registered under Sections 406, 420, 370, 34 IPC
and under Section 24 Emigration Act (Offence under Section
370 IPC and under Section 24 Emigration Act added later on) at
Police Station Sadar Fatehabad, District Fatehabad.

On 24.11.2020, following order was passed by this
Court:-

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

In compliance of order dated 17.11.2020, a status report has been filed by the State by way of affidavit of Mr. Subhash Chander, H.P.S., Deputy Superintendent of Police, Headquarter, Fatehabad, District Fatehabad (Haryana).

It appears from the record that a complaint was filed by the complainant – Dhuman Singh before SSP, Ludhiana (Rural), which was marked to DSP, Ludhiana (Rural). The allegations were enquired into by the Police/DSP, Ludhiana (Rural). The complaint was recommended to be filed on 11.02.2020.

During course of enquiry, the complainant – Dhuman Singh told the police that he had already filed an application on the same subject matter before Police Station Sadar, Fatehabad. On the basis of aforesaid fact, petitioner filed anticipatory bail before the Court of Sessions at Fatehabad, which was disposed of vide order dated 27.01.2020 with a direction to the

Investigating Officer/SHO, Police Station Sadar Fatehabad to give seven days prior notice to the petitioner before making his arrest in the event of finding any material available against the petitioner during investigation. The petition was disposed of in compliance of the aforesaid order. The police is alleged to have issued repeated notices as per the status report. There is a serious dispute with regard to service of notice upon the petitioner as alleged by learned counsel for the petitioner.

In view of aforesaid contention raised by learned counsel for the petitioner, it would be appropriate to direct the Investigating Officer of the case to file a specific affidavit with regard to lawful service of notices (Annexures R-1 to R-3) and also the notice dated 23.10.2020 attached with the petition as Annexure P-5.

Let the needful be done within two weeks.

Till the next date of hearing, arrest of the petitioner shall remain stayed.

Adjourned to 19.01.2021.”

At the time of filing aforesaid petition, affidavit of Subhash Chander, H.P.S., Deputy Superintendent of Police, Headquarter, Fatehabad, District Fatehabad was available wherein factum of service of notices dated 26.08.2020, 16.09.2020 and 21.09.2020 upon the petitioner was in issue.

Vide the aforesaid order, the Investigating Officer was directed to file a specific affidavit with regard to lawful service of notices (Annexures R-1 to R-3) and also notice dated 23.10.2020 attached with the petition as Annexure P-5.

In compliance of the aforesaid order, the police has again filed affidavit of SI Mahender Singh i.e. Investigating Officer, Economic Offences Branch, District Fatehabad wherein it has been mentioned that notices dated 26.08.2020 and 16.09.2020 could not be served upon the petitioner due to the situation arising out of pandemic COVID-19. Service of notice dated 23.09.2020 is stated to be through father of the petitioner.

Perual of notice dated 23.09.2020 through father of the petitioner attached as Annexure R-6 with this reply would remain debatable. The earlier notice attached with the original status report dated 23.11.2020 submitted by way of affidavit of Subhash Chander, H.P.S., Deputy Superintendent of Police, Headquarter, Fatehabad, District Fatehabad (Annexure R-3) was in the context of service of notice through father of the

petitioner on House No.17/17-8 Guru Teg Bahadur Mohalla Jagraon. In Annexure R-6 attached with the present reply, there is no such signature of father of the petitioner. As per address of the petitioner, he is resident of House No.17/17-8, Mohalla Guru Tegh Bahadur Jagraon, Tehsil Jagraon, District Ludhiana and his father was shown to be resident of House No.17/17-8 Guru Teg Bahadur Mohalla Jagraon.

The police has not explained the aforesaid anomaly in the address of petitioner viz-a-viz address of his father. The police has also tried to explain the error appearing in the notice dated 23.10.2020 on the ground that the same was wrongly written in place of 23.09.2020. When the previous Investigating Officer i.e. Rakesh Kumar No.95/H went to give the notice, then he found mistake of month in the notice and found that month of October was wrongly written in place of month of September.

Owing to the aforesaid error, the Investigating Officer again prepared the notice by writing 23.09.2020.

Perusal of the aforesaid stand would show that the police has tried to project a case of due service of notice upon the petitioner against the record.

Faced with the situation, learned State counsel duly assisted by learned counsel for the complainant submits that the police would undertake the exercise of serving the petitioner

afresh in accordance with law and thereafter would proceed against the petitioner.

In view of aforesaid position, this petition is disposed of.

Rigor of order dated 27.01.2020 passed by the court of Sessions at Fatehabad would be applied till issuance of advance notice to the petitioner and till culmination of process arising thereunder in accordance with law. On receipt of notice, the petitioner would be at liberty to avail his remedy as per law.

19.01.2021
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

- | | | | |
|----|---------------------------|---|--------|
| 1. | Whether speaking/reasoned | : | Yes/No |
| 2. | Whether reportable | : | Yes/No |