IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

(104)

CRM-M-39890-2021

DATE OF DECISION: 24.09.2021

DIWAN CHAND ...PETITIONER

VERSUS

STATE OF PUNJAB ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Dr. Anmol Rattan Singh Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate
for the Petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab
for the respondent-State.

...

SUVIR SEHGAL, J. (ORAL)

Heard through Video Conferencing.

Vide instant petition filed under Section 438 of the Code of Criminal Procedure, 1973, the petitioner is seeking grant of anticipatory bail in case FIR No.25 dated 30.05.2018 registered for offences under Sections 420 and 406 of the Indian Penal Code, 1860, at Police Station City Ahmedgarh, District Sangrur, Annexure P-1.

As per the version of the prosecution, FIR, Annexure P-1 has been registered on the complaint submitted by four farmers against M/s Diwan Chand and Company, Commission Agents, Ahmedgarh for playing fraud with the farmers. It has been alleged that the complainants have been selling crops to the firm for the last 22-25 years and in the last 5-7 years, the commission agent used to keep the price of the crops sold to it and issued temporary receipts for the amount. Janak Raj, his son Ninda, brother Diwan Chand (present petitioner) are managing the firm and Gurpreet Singh and Pappi are the Clerks of the firm. About two months earlier, Diwan Chand left for Canada and when the complainants went to Janak Raj and demanded their money back, he initially evaded the issue and eventually told them that they can go to Canada and collect the money from Diwan Chand. It has been alleged that the accused have duped the residents of the city and adjoining villages of Rs.8-9 crores and have purchased expensive properties in and around Ahmedgarh and in Canada leaving the complainants and other similarly situated persons totally penniless.

Counsel for the petitioner has urged that the petitioner was not present in India at the time of registration of the FIR as he had left for Canada on 09.02.2018, whereas the present complaint on the basis of which FIR has been registered, was submitted in April 2018. It is his argument that the allegations pertain to financial transactions, which have taken place during the course of business and being purely a civil dispute, the FIR has been registered to pressurise the accused. He submits that the business entity is still in existence and is being run by the brother of the petitioner at Ahmedgarh. On the basis of the zimini orders, Annexures P-4 and P-5, learned senior Advocate submits that the petitioner has not been declared as a proclaimed offender, though, his prayer for anticipatory bail has been rejected by the learned Sessions Court under the impression that he has been proclaimed as an offender.

Per contra, learned State counsel, who has been served with an advance copy of the petition, upon instructions from ASI Sukhwinder Singh, has opposed the petition and submitted that the firm is registered as Commission Agent and the petitioner is its proprietor. Upon instructions, he submits that the four complainants-farmers have sold crops worth Rs.85.50 lacs and the petitioner has not paid them for the same. As per his instructions, during investigation, it has transpired that the petitioner is the main accused.

I have considered the respective submissions of the counsel for the parties.

The petitioner along with his family members have been specifically named in the FIR and it has been alleged that they are working as Commission Agents, who have swindled crores of rupees from the residents of the area including the petitioner. During the last few years, the complainants, who are small and marginal farmers have sold crops worth more than 85 lacs to the accused, but when the accused refused to pay the proceeds and upon coming to know that the petitioner had left the country with their hard earned money, the complainants lodged the present FIR.

Petitioner is well aware that proceedings have been initiated under Section 82 of the Code of Criminal Procedure, 1973, proclamation issued against him has been effected, the statement of the serving officer has been recorded and the petitioner is likely to be declared as a proclaimed offender. Despite this fact, the petitioner has not returned to India and even the present petition has been filed by him from abroad as is apparent from the affidavit filed in support of the petition as well as the Power of Attorney, both of which have been executed by him from Brampton, Canada, on 14.07.2021, two months earlier, which is an indicator of the fact that the petitioner has no intention to return to the country. Therefore, this Court is of the view that custodial interogation of the petitioner is imperative.

Keeping in view the totality of the facts and circumstances, the petitioner is not entitled to the benefit of discretionary relief of anticipatory bail. The petition, being without any merit, is ordered to be dismissed.

It is clarified that any observation made herein above shall not be construed to be an expression on the merits of the case.

(SUVIR SEHGAL)
JUDGE

24.09.2021
Pardeep

Whether speaking/ reasoned	Yes
Whether Reportable	Yes