IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-4477-2022

Date of Decision:01.06.2022

Sushma .....Petitioner

Versus

State of Haryana .....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. G.C. Shahpuri, Advocate, for the petitioner.

Mr. Kanwar Sanjiv Kumar, A.A.G., Haryana.

Mr. Davinder Kumar and Mr. Sachin Jain, Advocates, for the complainant.

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<u>VINOD S. BHARDWAJ , J.(Oral)</u>

The petitioner has approached this Court under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in case FIR No.137 dated 17.06.2021 under Sections 406, 420, 506, 120-B of the Indian Penal Code, registered at Police Station Farakpur, District Yamuna Nagar.

As per the allegations set-out in the FIR, the complainant who is more than 84 years of age was brought by the petitioner and her husband Trivender Mohan on the context of taking care of him. The complainant used to run a tea stall and was not keeping the good health. The petitioner and her husband brought him along on a pretext to take care of him during his last days being nephews of the complainant. The complainant who used to run a tea stall at Sales Tax Compound in Nahan, Himachal Pradesh had saved his hard earned money to the tune of ₹15,00,000/- which was in his account in the Punjab National Bank, Branch Baddi, Himachal Pradesh lying in the shape of an FDR. The petitioner and her husband convinced the complainant to transfer some money to their account as they intended to send their son Varun Bambhari abroad for higher studies and that sufficient credit was required to be shown in the account so that the admission could be secured and that the amount in question would be returned as soon as Visa is obtained. Upon such an assurance meted out to the complainant, the FDR was got encashed and he transferred an amount of ₹10,00,000/- to the account of Trivender Mohan, husband of the petitioner. It is also alleged in the FIR that when the complainant had accompanied the accused persons to the Bank, they had in collusion obtained signatures of the complainant on various documents on the strength whereof, an ATM Card was got issued and there had been withdrawal of huge amount from the bank account of the complainant without his consent and knowledge. In addition thereto, the petitioner and her husband also uploaded the Phone Pay App in the mobile of the complainant and also carried out transactions by use of the said App. Further, when the complainant came to know about the unauthorized withdrawals of the amount from his account and claimed return of ₹10,00,000/- that were transferred by him to the petitioner and her husband so as to facilitate them to obtain Visa for their son Varun Bambhari, the petitioner and her husband started maltreating and giving beatings to the complainant and refused to return the amount. It is contended that the petitioner and her husband have embezzled an amount of ₹14,00,000/- and that on raising a demand of the said amount, the complainant was detained and beaten by the accused persons. The petitioner is also alleged to have facilitated extension of beating by catching hold of the complainant.

The husband of the petitioner was arrested by the police and was eventually granted the concession of regular bail. When the petition for anticipatory bail filed by the petitioner was pending before the Court of Additional Sessions Judge, Yamuna Nagar, an offer was made by the petitioner that she is ready and willing to return the borrowed amount of ₹10,00,000/- to the complainant. The said aspect was duly noticed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri while dealing with the concession of anticipatory bail. However, a rider was attached to it that the amount shall be refunded as and when the same is received from the University of East London where the same had been deposited towards fee of her son, namely, Varun Bambhari. The anticipatory bail petition was dismissed by the Additional Sessions Judge vide order dated 28.01.2022. The petitioner preferred the present petition under Section 438 Cr.P.C. and the said offer was reiterated. Upon being called to show her bonafide, an amount of ₹2,50,000/- was offered to be returned at the outset. The said fact was duly noticed in the order dated 07.02.2022 and an interim concession was granted on an assurance that the remaining amount shall also be paid expeditiously. The matter has since then been adjourned on numerous occasions wherein the petitioner had been seeking indulgence of the Court to arrange for the remaining amount. However, the amount in question has not been paid and the petitioner has come forward with an offer that they would be in a capacity to repay the amount only when the same is received from the University of East London.

Learned counsel for the petitioner has argued that the offence under Section 420 IPC is not made out in the instant case inasmuch as the complainant had himself gone to the bank to encash the FDR and transferred the said amount to the account of husband of the petitioner. It is further pointed out that the handing over of the amount was to the husband of the petitioner, who has already been granted the concession of regular bail. It is further argued that the custodial interrogation of the petitioner is not required for seeking recovery of any money.

I have heard learned counsel for the petitioner.

In so far as the submission of the petitioner that offence under Section 420 IPC is not made out, is concerned, the same is without any merit. The amount in question was advanced as per the allegations to enable the petitioner to secure Visa for her son. The said amount was never intended to be transferred for onward transmission to the University towards fee of their son Varun Bambhari. Furthermore, a perusal of the FIR also shows that signatures of the complainant were obtained on various forms so as to secure ATM Card and various withdrawals/transfers have been made on the strength of the said ATM Card as well. Moreover, even more amount has been withdrawn through the use of mobile App Phone Pay. In addition thereto, the complainant has repeatedly joined her husband in extending maltreatment, beating and harassment to the 84 years old man, who had saved his entire life's earning in the form of ₹15,00,000/- by running a tea stall at Nahan. Furthermore, the offer to repay the entire amount was made by the petitioner herself and that she wants to retract from the said offer. The bonafide of the petitioner is highly suspect. The complainant who is an 84 year old man cannot be forced to run around for the sake of seeking refund of his life's earning by way of institution of civil proceedings for refund of the amount. Such a course as suggested by the petitioner rather reflects her malicious and mischievous mind-set. There is no equitable relief to be extended to the petitioner in the given circumstances of the case.

The present petition is accordingly dismissed.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

June 01, 2022 **(VINOD S. BHARDWAJ)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No