

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

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**CRM-M-21596-2022
Date of decision: 25.05.2022**

LEKH RAJ @ SHEHZADA RAJ

....Petitioner

Versus

U.T. CHANDIGARH

...Respondent

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

Present: Mr. Rahul Bhargava, Advocate
for the petitioner.

Ms. Simsi Dhir, Additional Public Prosecutor
for respondent-U.T. Chandigarh.

VINOD S. BHARDWAJ. J. (ORAL)

The present petition has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No. 0163 dated 15.09.2021 registered under Section 420 of the Indian Penal Code, 1860 and Section 24 of the Immigration Act at Police Station Sector-36, U.T. Chandigarh.

2. Learned counsel appearing on behalf of the petitioner *inter alia* contends that the FIR in question has been registered at the instance of one Gurcharan Singh who is alleged that he has been defrauded of a sum of Rs.6 lakhs for sending his son Malkit Singh to Canada on a Study VISA by M/s I.B. Education and Immigration Service Pvt. Ltd., Sector-42-C, Chandigarh. He contended that the complainant had seen an advertisement on the television that the accused-company is in the business of sending students abroad on student VISA. In this regard he had come to the office of the company on 29.09.2020 and had made inquiry whereupon he was assured that the

company has experience in sending the people abroad and that even the son of the complainant shall be send abroad. The owner of the company is claimed to have received of Rs.6 lakhs from the complainant at different intervals of time. It is contended that Pooja Mahajan, who is the owner of the company had received the money but had not arranged for the VISA to send his son abroad. Despite failure on the part of the company to fulfill its obligation, even the money has not been returned.

3. Counsel for the petitioner submits that the petitioner is a professional singer and was hired by one 'Emmy Enterprises' to promote their business by performing live concerts for the company and was being paid for the said shows. It is contended that the terms of employment of the petitioner were restricted to carrying out work as a recording artist and producing commercial sound recordings. A reference in this regard is made to Annexure P-2 to contend that the petitioner was engaged on a salary of Rs.65,000/- per month along with 60% commission of the concerts/live shows. He submits that the petitioner has not engaged in any interaction with the customers/the prospective victims and has never assured anyone of sending them abroad. He further contends that no amount was received by the petitioner or paid by the complainant to any other person on the inducement or allurements of the petitioner. He contends that the petitioner has been sought to be nominated as an accused on the strength of the account transaction which shows that money from the account of the company was transferred to that of the petitioner which the petitioner claims to be his payments in terms of the letter of

engagement and appointment as well as the commission to the extent of 60% of the profits/receipts during the shows/performances. He submitted that the petitioner has been in custody since 15.03.2022. He further submitted that investigation is complete and that the trial in question is a magisterial trial. It will take long time before the trial is concluded. He further points out that the petitioner does not have any criminal antecedents and no other criminal case has been registered against him.

4. Per contra, Ms. Simsi Dhir, learned Additional Public Prosecutor, U.T. Chandigarh submits that statement under Section 161 Cr.P.C. of one Paramjit Singh has been recorded to the extent whereby he has stated that he handed over a sum of Rs.1 lakh to the petitioner on the pretext of obtaining certain certificates to cover up the gap year. It is thus contended that evidently, the petitioner had received the proceeds of inducement for sending the son of one of the victims namely Paramjit Singh to abroad.

5. Controverting the aforesaid submission, learned counsel appearing on behalf of the petitioner contends that there was no occasion or reason to the petitioner to claim any amount and furthermore, there was also no reason as to why the aforesaid amount would have been paid without any proper receipt considering that the services of company had already been hired and in case the petitioner was receiving the said money as an employee of the company, yet, he cannot be held guilty for fraudulently inducing anybody to part with their money under any pretext.

6. I have heard learned counsel for the parties and have gone through the documents appended with the petition.

7. It is not disputed that the investigation in the case qua the petitioner is already complete and a final report already stands filed. It is also evident that the case in question is based upon documentary evidence and that out of the entire set of 21 victims claimed by the prosecution, only 01 person has named the petitioner and has alleged that he handed over a sum of Rs.1 lakh in cash to the petitioner for obtaining appropriate certificate to cover up the gap year. No explanation has come forth as to why the said complainant chose to part with the aforesaid sum of money despite him having entered into a separate agreement with the company itself for ensuring VISA for sending his son abroad, on being conscious of the fact that such services were required to be prescribed by the company. In any case, the same would be an issue of trial. Evidently, there is no person who has raised an allegation that the petitioner had allured the victim or any other person and made an assurance to send any person abroad in lieu of the amount to be paid to the company.

8. Be that as it may, arguable issues arise that would be required to be determined at the stage of trial. The present case is a magisterial trial and the petitioner has already undergone an actual custody of 02 months & 07 days, I deem it appropriate to enlarge the petitioner on bail to the satisfaction of the trial Court.

9. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

10. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner

directly or indirectly.

11. The observation 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.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 25, 2022

vishal sharma

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>