

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

205

CRM-M-26535-2022

Date of Decision: 23.06.2022

SANJAY BAKSHI

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

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

Present: Ms. Ridhi Bansal, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.15, dated 23.01.2020 under Sections 406, 420, 506 and 120-B of the Indian Penal Code, 1860, registered at Police Station City Rupnagar.

Learned counsel appearing on behalf of the petitioner has submitted that the FIR in question has been registered against the petitioner on the basis of a complaint given by one Pomy Soni, who is completely unknown to the petitioner and there had been no transaction of any nature whatsoever by the petitioner with the said complainant. In any case, the gist of the allegations levelled in the FIR is to the effect that the said complainant claims to be interested in sending his son Manish Soni aged 33 years abroad and for which he had a discussion with his friend from Ropar, who is stated to have informed him about Susham Lata wife of Rajinder Bakshi and also informed him that the son and daughter-in-law of Susham Lata do immigration work in Canada. The complainant is stated to have met

Susham Lata and was convinced by Susham Lata about her capacity and capability to ensure a foreign travel for his son Manish Soni to Canada. A demand of Rs.40,00,000/- is stated to have been made by Susham Lata, however, upon negotiations, the same was settled at Rs.35,00,000/-. An advance of Rs.5,00,000/- was sought for and it was stated that the necessary formalities shall take about a year to conclude. It is further alleged that the petitioner alongwith his mother Susham Lata is stated to have come to the residence of the complainant at Ropar to get an advance payment of Rs.5,00,000/- in the month of April 2016 and signatures on the file for documentation were also obtained. It is further alleged in the FIR that in the month of May 2016, Susham Lata and the petitioner also collected the remaining amount of Rs.30,00,000/- from the residence of the complainant in Ropar. It is alleged that thereafter, the complainant had been pursuing the matter with the Susham Lata for either carrying out the work so promised or to return the money instead. In the month of November 2018, it is alleged that the petitioner-accused refused to return the money; but on insistence, Bhavna Bakshi daughter of Susham Lata issued a cheque of Rs.35,00,000/- bearing no.000955 dated 28.10.2019. Petitioner Sanjay Bakshi is also stated to have given a receipt for the said cheque in the presence of one Mewa Singh. On presentation, the cheque was, however, dishonoured.

Learned counsel appearing on behalf of the petitioner further contends that the case of the prosecution does not inspire confidence inasmuch as the conduct of the complainant does not reflect an ordinary conduct of a prudent man. There was no reason for the complainant to have advanced huge amount of Rs.35,00,000/- within a span of one month

without taking any receipt for advancing such a huge amount notwithstanding the fact that cash transaction of such a huge amount is impermissible in law and capacity of the complainant to advance such a huge amount is itself yet to be established. It is further argued that in addition thereto, there was no occasion as to why the complainant did not institute proceedings under Section 138 of the Negotiable Instruments Act, 1881 especially when the cheque in question had been dishonoured in the month of October 2019. It was apparently on account of gross failure on the part of the complainant to establish existence of a legally enforceable debt and pre-existing liability that the complainant chose not to take recourse to the appropriate remedy in accordance with law and has instead connived with the police officials to institute the present FIR in the month of January 2020. He further submits that it would even otherwise be beyond comprehension as to why the complainant would travel all the way to Yamuna Nagar for sending his son abroad considering especially that a large number of travel agents, who are fully functional within the State of Punjab. It is also argued that even if the allegations levelled in the FIR are taken into consideration, the allurement is stated to have been made by Susham Lata (mother of the petitioner) and that it was not the petitioner who had induced the complainant to part with any money or made any assurance that Manish Soni son of the complainant Pomy Soni would be sent to Canada. It is at best a case where the petitioner accompanied his mother to collect the money. He contends that Susham Lata has already been granted the concession of regular bail vide order dated 17.02.2020. It is contended that the petitioner has been in custody since 10.05.2022 and

that it is a magisterial trial. His continued custodial interrogation is not warranted for conclusion of the investigation.

Per contra, learned State counsel has submitted that huge amount of Rs.35,00,000/- was fraudulently obtained by the petitioner in connivance with his mother and that neither the amount has been returned nor has the son of the complainant been sent to Canada. She, however, could not controvert the fact that the mother of the petitioner has already been granted concession of regular bail and also that the petitioner is in judicial custody and that he is not required in relation to any further investigation in the present case. She has, however, expressed that the petitioner was apprehended at the airport while making an attempt to escape and that another case of similar nature is also pending against the petitioner.

Learned counsel for the petitioner has submitted that the petitioner is ready and willing to furnish heavy surety to ensure his presence and undertakes to deposit his passport with the investigating agency to ward off any apprehension expressed by the prosecution agency. It is further submitted that insofar the second case is concerned, the same was investigated into and the respondent-State had proposed to file a closure report in the same, however, the same has not been submitted to Court so far. He further points that even though the petitioner was stated to be declared as a proclaimed person in the said case, however, the said order declaring the petitioner as proclaimed person has already been set aside by this Court.

I have considered the rival submission advanced by the learned counsel representing the respective parties.

Taking into consideration that fact that the co-accused of the petitioner, to whom the attribution of inducement is made, has already been enlarged on bail. It is further noticed that it is a magisterial trial in which further custodial interrogation of the petitioner is not warranted. Besides, the petitioner has already been undergone an actual incarceration of nearly two month since his arrest. In view of the above, I deem is appropriate to allow the instant petition.

Accordingly, the present petition is allowed and the petitioner is admitted to regular bail subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned.

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.

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.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

23.06.2022
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No