S.No.204

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-32492-2021 (O&M)
Date of Decision:11.01.2022

Mukesh Dutt .....**Petitioner**

Vs.

State of Haryana .....**Respondent**

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Tushar Gautam, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Mr. Gagandeep Singh Rana, Advocate for the complainant.

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(Through Video Conferencing)

VIKAS BAHL, J.

This is the first petition under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.97 dated 18.06.2021 under Sections 406, 420, 120-B IPC registered at Police Station Sector 9, Ambala City, District Ambala, Haryana.

The FIR was registered on the statement of one Kuldeep Singh who made allegations hat the petitioner along with his wife duped the complainant of the amount of Rs.22 lakhs on the promise that he would send his son Pankaj Kumar abroad and has alleged that he had made met the said Mukesh Dutt through one Mahenderpal Singh alias Raju and although, had paid an amount of Rs.22 lakhs but still his son has not been sent abroad. It is further alleged that cheques worth amounting of Rs.22 lakhs have been taken from the complainant by the petitioner as a matter of security.

Notice of motion was issued and interim relief was granted on 29.10.2021.

Learned counsel for the petitioner has submitted that the petitioner has joined the investigation in pursuance of the said order.

Learned State Counsel assisted by learned counsel for the complainant, have submitted that although the petitioner has joined the investigation but recovery is still to be made from the petitioner and have thus, opposed the application for anticipatory bail.

Learned counsel for the petitioner has submitted that in the present case, in fact the petitioner and the complainant have a familial relationship and the complainant did not have funds and he had requested the petitioner to pay him money for sending the son of the complainant abroad. The petitioner had paid Rs.8 lakhs in cash and had also given the cheques which have been detailed in the FIR, in order to help the complainant to send his son abroad. Learned counsel for the petitioner has further submitted that in fact as a security, the complainant had given two cheques of the amount of Rs.12 lakhs each totalling Rs.24 lakhs and placed on record the said cheques as Annexure P-5. It is also argued that the said cheques initially were not deposited by the petitioner but the petitioner subsequently deposited the said cheques and the said cheques were dishonored. It is submitted that the total amount mentioned in the FIR is stated to be Rs.22 lakhs whereas, the cheques in favour of the present petitioner are to the extent of Rs.24 lakhs. It is also submitted that as per the FIR, it was stated that an amount of Rs.7 lakh had been paid to the petitioner by the complainant online but even as per the prosecution case, the said amount stood forthwith as Rs.1,59,000/-. It is submitted that in fact the said amount of Rs.1,59,000/- was paid by the complainant to the petitioner to partially repay the loan of Rs.8 lakhs which has been paid by the petitioner to the complainant.

Learned counsel for the State as well as the complainant have stated that the amount of Rs.22 lakhs has not been recovered from the petitioner. It is further submitted that in case the petitioner is the person who had been wronged then, he should have filed a complaint, which he has not done. It is also submitted that there is some telephonic conversation which would also show that the petitioner is involved in the alleged offence.

This Court has heard the learned counsel for the parties and have perused the record. In the present case, there is a version and a cross-version with respect to the same transaction involving the petitioner and the complainant. The petitioner is not involved in any case and nothing is shown that he is involved in the business of sending people abroad. As per the case of the petitioner, the petitioner has loaned an amount of Rs.8 lakh cash and gave cheques in order to help the complainant to send his son abroad and the petitioner and complainant have a familial relationship. The petitioner has further referred to two cheques dated 08.04.2021 and 05.04.2021 for an amount of Rs.12 lakhs each, issued by the complainant in favour of the petitioner. The issuance of the said cheque has not been disputed. The version of the complainant in the FIR, thus, cannot be believed inasmuch as, as per the FIR, it has been stated that an amount of Rs.22 lakh has been paid by the complainant to the petitioner whereas the cheques which have been issued by the complainant to the petitioner are of the amount of Rs.24 lakhs. The version of the petitioner with respect to the said cheques is that for the loan which the petitioner has given to the complainant, the complainant had issued the said cheques. It had been submitted that the said cheques have been dishonored and the petitioner is in the process of filing a complaint against the complainant. It is also clear that only an amount of Rs.1,59,000/- has been paid online by the complainant to the petitioner whereas in the FIR, the amount stated to be is Rs.7 lakhs. Even with respect to the same, the argument of learned counsel for the petitioner is that the said amount of Rs.1,59,000/- was paid by the complainant to the petitioner in return of the loan of Rs.8 lakh which was paid in cash.

The said arguments reflect several debatable issues which should be adjudicated upon at the time of the trial. The entire matter is based upon documentary evidence of the petitioner.

In pursuance of the interim order dated 29.10.2021, the petitioner has already joined the investigation and, thus, the custodial interrogation of the petitioner is not required and, accordingly, the present petition for anticipatory bail is allowed and the interim order dated 29.10.2021 is made absolute.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

January 11, 2022 **(VIKAS BAHL)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No