

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-36252-2022 (O&M)
Date of Decision : 10.11.2022

Usha and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ashish, Advocate for
Mr. Vikram Singh, Advocate for the petitioners.

Mr. Rajiv Sidhu, DAG, Haryana
assisted by SI Rampal Singh.

Mr. Ravinder Bangar, Advocate for the complainant.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioners have approached this Court seeking grant of anticipatory bail in respect of a case registered vide FIR No. 95, dated 10.6.2022, Police Station Jathlana, District Yamuna Nagar, under Sections 406, 420, 506, 120-B of Indian Penal Code and Section 10 of the Immigration Act.
2. Reply filed by respondent-State by way of affidavit of Shri Rajat Gulia, DSP, Radaru, Yamunanagar is taken on record.
3. At the time of issuance of notice of motion on 17.8.2022, the following order was passed :

“The petitioners, namely, Usha wife of Balwant Singh and Jatin son of Balwant Singh, seek grant of anticipatory bail in respect of a case registered vide FIR No.95 dated 10.06.2022 at Police Station Jathlana, District Yamuna Nagar,

under Sections 406/420/506/120-B IPC and Section 10 of the Immigration Act.

The FIR in question was lodged at the instance of Major Singh, wherein it has been alleged that the accused i.e. Balwant Singh, Usha (petitioner No.1) and Jatin (petitioner No.2) alongwith other accused had defrauded the complainant of an amount of Rs.24.90 lakhs on the pretext of sending his cousin, namely, Vijay and his wife Nisha to USA and that out of the said amount, a payment of Rs.16.90 lakhs had been made in the bank account of Balwant Singh.

Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in the present case mainly on account of the fact that petitioner No.1 – Usha and petitioner No.2 – Jatin, happen to be wife and son respectively of Balwant Singh, who is alleged to be the main accused. Learned counsel has further submitted that though there is some vague allegation in the complaint that the petitioners had also held out a representation to the effect that the complainant's cousin Vijay and his wife Nisha could be sent abroad, but in fact the main allegations are against co-accused Balwant Singh. It has further been submitted that the allegations in any case seem to have been exaggerated as regards the amount defrauded and that it is only an amount of Rs.16.90 lakhs, which has been credited in the account of coaccused Balwant Singh out of which an amount of Rs.14 lakhs already stands paid back to the complainant.

Learned counsel has also submitted that the petitioners in order to prove their bonafides are willing and ready to deposit the balance amount of Rs.2.90 lakhs before the trial Court.

Notice of motion.

At this stage, Mr. Krishan K. Chahal, Addl. AG, Haryana, accepts notice on behalf of respondent – State and Mr. Ravinder Bangar, Advocate, puts in appearance on behalf of the complainant and filed his Vakalatnama, which is taken on record.

The petitioners, as per their offer, shall deposit an amount of Rs.2.90 lakhs before the trial Court/Illaq Magistrate within a period of 4 weeks from today, which shall be got invested in FDR in some Nationalized Bank. The trial Court/Illaq Magistrate shall, however, issue specific directions to the Bank concerned not to entertain any request for encashment of the same except under orders of the Court. In case, the petitioners are ultimately found guilty and convicted and such conviction attains finality, the complainant shall be entitled to proceeds of said FDR. However, in case the accused/petitioners are found innocent and such acquittal attains finality, the petitioners shall be entitled to proceeds of the said FDR along with interest.

List again on 10.11.2022.

Meanwhile, in the event of arrest, the petitioners be released on interim bail subject to their furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall join investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

It is, however, made clear that in case the aforesaid amount is not deposited within the stipulated period of 4 weeks, the aforesaid order qua grant of interim bail shall be deemed to have been recalled. ”

4. Learned State counsel has informed that pursuant to interim directions issued by this Court the petitioners have since joined investigation but have not fully cooperated inasmuch as they have not got the passports of the complainants recovered.
5. This Court has considered rival submissions addressed before this Court.
6. Having regard to the facts and circumstances of the case and also the nature of allegations and the fact that the petitioners have joined investigation, this Court is of the opinion that it is not a case where custodial interrogation would be warranted. Though, the learned State counsel has objected to the confirmation of bail on the ground that the petitioners have not got the passports of the complainants/victims recovered but the non-recovery of incriminating article at the instance of accused cannot be made a ground for denial of bail in every case inasmuch as forcing recovery of the same may virtually amount to forcing admission of guilt of the accused.
7. At the time of issuance of notice of motion, the petitioners had offered to deposit an amount of Rs. 2.90 lacs to prove his *bona fide*, which already stands deposited.

8. In these circumstances, this Court is of the opinion that it is a fit case for grant of anticipatory bail. The petition is accepted and the interim directions issued by this Court vide order dated 17.8.2022 are hereby made absolute, subject to the condition that the petitioners shall join investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

10.11.2022

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**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No