IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212

CRM-M-45743-2021 (O&M)

Date of Decision: 15.03.2022

Mohan Kakkar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Preetinder S. Ahluwalia, Advocate,
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab,
assisted by ASI Balwinder Singh.

<u>GURVINDER SINGH GILL, J.</u> (Oral)

1. The petitioner has approached this Court seeking grant of anticipatory bail in respect of a case registered vide FIR No.113 dated 20.9.2021 at Police Station Navi Baradari, Police Commissionerate Jalandhar, District Jalandhar under Sections 406, 420 of Indian Penal Code and Section 13 of Punjab Travel Professional (Regulation) Act, 2014.

2. At the time of issuance of notice of motion on 01.11.2021, the following order was passed:

> "The petitioner has approached this Court seeking grant of anticipatory bail in respect of a case registered vide FIR No.113 dated 20.9.2021 at Police Station Navi Baradari, Police Commissionerate Jalandhar, District Jalandhar under Sections 406, 420 of Indian Penal Code and Section 13 of Punjab Travel Professional (Regulation) Act, 2014, wherein it is alleged by the complainant that the petitioner and his wife had taken an amount of Rs.20 lakhs in cash for getting permanent residency for him, for

complainant's wife and for complainant's son, but he had not got the permanent residency and when the complainant demanded the said amount back, the petitioner had been lingering on the matter. It is further alleged that ultimately the petitioner issued three cheques i.e. one cheque for an amount of Rs.10 lakhs and two cheques for an amount of Rs.5 lakhs each, which were dishonoured.

Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the present case and that it is infact a case of monetary transaction between the parties wherein petitioner had taken an amount of Rs.10 lakhs from the complainant in the year 2009 and although the petitioner had been regularly paying the interest on the said amount but the principal amount had not been paid.

Learned counsel for the petitioner has further submitted that the matter was inquired into by Assistant Commissioner of Police (Detective), Jalandhar and as per his initial report, he had found that there was no documentary evidence pertaining to the allegation of complainant regarding giving an amount of Rs.20 lakhs to the petitioner and that infact on account of monetary transaction of Rs.10 lakhs between the parties, the petitioner had got transferred an amount of $10,000 (Australian Dollars) in the bank account of son of complainant namely Saurav Malhotra. It has further been submitted that since certain objections were raised on the said report by the Commissioner of Police, Jalandhar the matter was further inquired into by the Assistant Commissioner of Police (Detective), Jalandhar and it was found that complainant's son had been residing on Refuge Visa (in Australia) since the year 2018. It was further observed by the Assistant Commissioner of Police (Detective), Jalandhar that in case the petitioner had got the amount of $10,000 (Australian Dollars) transferred in the bank account of son of the complainant, then he would have taken his cheques back. Subsequently, the matter was sent for legal opinion of the District Attorney and upon receipt of his report, the Assistant Commissioner of Police (Detective), Jalandhar observed that although the complainant had not produced any documentary evidence regarding giving an amount of Rs.20 lakhs to the petitioner but in view of his background and his profession, the allegations could not be refuted and a recommendation was made to conduct further proceedings in the matter and on account of which the FIR was lodged.

Learned counsel for the petitioner has further submitted that the petitioner is not disputing the receipt of an amount of Rs.10 lakhs and that it is a case where there is absolutely no evidence that the said amount had been taken for arranging for permanent residency of the complainant's family. It has been submitted that infact the complainant and his wife already had a Visa for Canada, while their son was already in Australia. Learned counsel has further pointed out that although the inquiry proceedings have doubted, the factum of petitioner having got an amount of $10,000 (Australian Dollars) transferred in the bank account of son of the complainant but the mere fact that it is the petitioner, who is in possession of the lodgement receipt (Annexure P-4) regarding transfer of the said amount pursuant to a 'whatsapp' chat clearly shows that it is the petitioner's acquaintance, who had got the said amount transferred. Learned counsel has further submitted that even as on date the petitioner is willing to repay the balance amount of Rs.5 lakhs subject to full and final settlement of the matter.

Notice of motion for 2.3.2022.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner 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."

3. Learned State counsel upon instructions while informing that the petitioner has joined investigation has, however, opposed the petition on the ground that it is a case where the petitioner had taken an amount of Rs.20 lakhs on the pretext for getting PR for 3 members of the family of the complainant, whereas no PR was arranged for any of the member of the complainant's family. Learned State counsel has further informed that the petitioner happens to be involved in 4 other identical cases.
4. I have considered rival submissions addressed before this Court.
5. It is a case where the petitioner has not disputed that he had taken an amount of Rs.10 lakhs from the complainant, but it stated therein that the same has been taken as a loan in respect of which he is paying interest and that on account of aforesaid monetary transaction of Rs.10 lakhs, the petitioner had already transferred an amount of $10,000 (Australian Dollars) to the complainant's son in the year 2019 as would be evident from lodgment receipt (Annexure P-4). Learned counsel for the petitioner submits that his client is willing to deposit another amount of Rs.5 lakhs before the trial Court to prove his bonafides.
6. In view of the aforestated discussion, wherein this Court finds that the petitioner has already joined investigation and some amount is stated to have been transferred to the son of the complainant i.e. an amount of $10,000 (Australian Dollars) and the petitioner has also offered to deposit another amount of Rs.5 lakhs, the petition is accepted and interim directions issued by this Court vide order dated 01.11.2021 are hereby

made absolute subject to the condition that the petitioner 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.

7. However, the petitioner, as per his offer, is directed to deposit an amount of Rs.5 lakhs before the trial Court within 2 months from today. Upon such amount being deposited, the trial Court/Illaqa Magistrate shall get the same invested in some FDR with a specific direction to the Bank Manager concerned not to entertain any request for encashment except under orders of the Court. In case, the petitioner is found innocent and is acquitted and such acquittal attains finality, he shall be entitled to the proceeds of the FDR. However, in case he is found guilty and his conviction attains finality, it is the complainant who shall be entitled to the proceeds of such FDR.

15.03.2022 **(GURVINDER SINGH GILL)**
Vimal **JUDGE**

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