

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

CRM-M-42258-2022

Date of Decision: 15.9.2022

Raj Kumar

... Petitioner

Versus

State of Punjab

... Respondents

CORAM:-HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Gurcharan Dass, Advocate for the petitioner

Mr.GS Sandhu, DAG, Punjab

Mr.Anil K. Sagar, Advocate for complainant

...

The petitioner has approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail to him in FIR No.199 dated 20.7.2022 under Sections 420, 406, 506, 120-B of the IPC and Section 13 of the Punjab Travel Professionals (Regulation) Act, 2014 registered in Police Station City Kharar, District S.A.S. Nagar.

Learned counsel for the petitioner contends that present case has been lodged falsely against the petitioner. The petitioner has nothing to do with the offence. Learned counsel further submits that nothing is to be recovered from the petitioner and thus no custodial interrogation is required.

On the contrary, learned counsel for the State submits that the petitioner alongwith his other co-accused has taken Rs.42,00,000/- from the complainant on the pretext of sending the relative Jaswinder Singh of the complainant abroad to USA. But neither Jaswinder Singh was sent to the USA nor the aforesaid amount received from the complainant has been returned by the accused.

Learned counsel for the complainant submits that one more FIR under the similar offence is pending against the petitioner. He produces a photocopy of cheque for an amount of Rs.32.00 lakhs issued by the petitioner to the complainant which is taken on record. The aforesaid cheque issued by the petitioner has been dishonoured and returned on 28.2.2022. Learned counsel submits that one more similar FIR has been registered against the petitioner. The company of the petitioner and his other co-accused is not registered nor they are having any valid licence.

Having heard learned counsel for the parties, I am of the view that the petitioner has been specifically named in the FIR. There is specific role attributed to him. Investigation is still going on and, therefore, custodial interrogation of the petitioner is necessary for finding out the modus operandi of commission of offence and for recovery of the amount. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in **State Vs. Anil Sharma, (1997) 7 SCC 187** held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the

person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Further, it is well settled that Article 21 of the Constitution is not an absolute right and is subject to the procedure established by law. The facts and circumstances involved in the present case, point towards the complicity of the petitioner and thus custodial interrogation of the petitioner is necessary and would not amount to the violation of petitioner's right under Article 21 of the Constitution.

In view of the discussion made above, the present petition being devoid of any merit is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

15.9.2022

MFK

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No