IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-48888 of 2021
Date of Decision: 15.03.2022

Harpreet Kaur

...... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. P.K.S. Phoolka, Advocate,
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab

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AMOL RATTAN SINGH, J. (ORAL)

On 01.12.2021 the following order had been passed by this court:-

"Case heard via video conference.

By this petition, the petitioner seeks the concession of 'anticipatory bail' under the provisions of Section 438 Cr.P.C., upon FIR No.322, dated 13.10.2021, having been registered at Police Station City Faridkot, District Faridkot, alleging therein the commission offences punishable under the provisions of Sections 420/406 of the IPC.

Learned counsel for the petitioner submits that other than the fact that the petitioner and her husband, Beant Singh, are having a matrimonial dispute, Beant Singh is the person who was the sole proprietor of the firm which had facilitated the visa application form of the complainant; and even as per the FIR the petitioner is only an 'expert computer operator' for uploading such forms.

He further submits that in a similar FIR registered against the petitioner and her husband, she had been admitted to interim bail by this court on 17.08.2021, she having filed CRM-M-33198-2021 in that context.

Even before notice of motion had been issued, learned counsel appears for the complainant and submits that in fact Rs.11 lakhs were transferred to the account of the firm in question, i.e. M/s KOIC Immigration and IELTS Centre, with that amount thereafter transferred by the firm to the petitioners' personal account.

Learned State counsel seeks time to take instructions in that matter.

Notice of motion is formally issued, though of course learned State counsel and counsel for the complainant are already present on advance notice received.

A gazetted officer is directed to file an affidavit with regard to the aforesaid contentions raised, failing which the SSP concerned shall be summoned to court.

In view of the fact that the petitioner is not stated to be a partner in the firm and it is still to be confirmed as to whether the amount was actually transferred to her personal account or not, she is directed join investigation within one week and if, upon her so joining, she is sought to be arrested, she shall be released on interim bail, upon her furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Duty Magistrate, till the next date of hearing.

She shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, she would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join the petitioner in investigation, in terms of the order of this court.

It is also made clear that whether the interim order should continue to operate in favour of the petitioner would be seen only upon a gazetted officer filing a reply giving therein the facts of the case.

It is to be noticed that learned counsel for the complainant has also submitted that, firstly, the petitioner was present at the time when the "deal" was struck with the accused; and further, that she is actually operating the account of the aforesaid firm herself with her husband being in custody.

Naturally, the gazetted officer who will file an affidavit, will look into that aspect and state so in his affidavit whether it is a correct contention or not.

Adjourned to 25.01.2022."

Thereafter on 23.02.2022 the following order had been passed, the turn of the case not having come up on 25.01.2022:-

"Case heard via video conferencing.

The affidavit dated 20.01.2022 filed by the DSP, Sub Division, Faridkot, is ordered to be taken on record.

Though I would find no reason to continue with this petition in view of what has been stated therein, to the effect that other than amounts of Rs.1,00,000/- and Rs.2,00,000/- transferred in May and June 2019, even a sum of Rs.14.5 lacs was transferred to the personal account of the petitioner by the firm of which her husband is the Proprietor/Partner, (also seen with the other allegations against the petitioner in the FIR), yet Mr. Phoolka submits that the said amount was actually transferred in order to ensure that in the context of the loan taken by the petitioner and her husband, there was no default in the payment of instalments.

If it is a joint loan, as to why it could not be paid by the husband, is something which obviously would need to be explained by him.

On his request, adjourned to 03.03.2022, with it made clear that if the aforesaid observations of this court are not met with, the petition would stand dismissed on that date.

It is to be noticed that learned counsel for the complainant has also submitted that even in terms of the affidavit of the DSP, the husband of the petitioner being in custody, the bank account of the firm is still being operated.

Whether or not the petitioner is operating that account, or her husband is, would need to be seen because this is a petition filed by Harpreet Kaur and not filed by her husband, Beant Singh.

Till then only, interim order to continue."

On 03.03.3022 the following order had been passed:-

"Counsel for the petitioner today insists that the petitioner and her husband had duly charged approximately Rs. 11,00,000/- from the complainant for aiding him and his family to immigrate to the Canada by way of a proper application to the Canadian High Commission; and that they had duly filled the application form and had also deposited the fee required to be paid. He would place on record the said documents showing that the application form has been duly uploaded on the website of the High Commission and the receipt as regards money paid for obtaining the immigration visa.

It is to be specifically noticed by this court that documents that counsel for the petitioner today has produced in court, are only documents showing the number of points that the applicant would be allotted as per the information supplied on the website, which is no proof whatsoever of any application actually having been made and any fee actually having been paid.

Adjourned to 14.03.2022.

It is made clear that if such documents are not placed on record, the petition shall stand dismissed.

Interim order to continue, till the next date of hearing only and specifically."

Yesterday, when the matter came up, again it had been noticed in the order passed that though CRM-8858 of 2022 had been filed by the petitioner giving therein what was stated to be a transaction between the petitioner and her husband, however the documents as were required to be filed, i.e. proof of a genuine application for a visa having been made to the Canadian High Commission, and the receipt showing transfer of money to the Commission for processing of the visa and the grant thereof, were not placed on record. Consequently learned counsel for the petitioner had sought one days' time to take instructions as to whether the petitioner is willing to return the entire money to the complainant as was paid to her/her husband and their firm.

Today he submits that the petitioner is not able to do.

That being so, for the reasons already recorded in the previous orders, I find no ground to entertain this petition any further, which is consequently dismissed, with the interim order vacated.

However, it is made clear that all observations made are only in the context of a petition filed under the provisions of Section 438 of the Cr.P.C. seeking anticipatory bail, and as regards the investigation qua the petitioner and any other co-accused, that would continue as per evidence gathered and thereafter appraised by the competent court wholly on its own merits.

March 15, 2022 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No