

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-44683-2022

Date of Decision:-30.11.2022

Balwinder Singh Khaira.

.....Petitioner.

Versus

State of Punjab & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Gaurav Datta, Advocate for the Petitioner.

Ms. Ramta Chowdhary, Assistant Advocate General, Punjab.

Mr. J.S. Dadwal, Advocate for the Complainant.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.114 dated 13.06.2021 under Sections 420 IPC registered at Police Station Mukerian, District Hoshiarpur.

The present FIR came to be registered at the instance of Capt. Balbir Singh who stated that his son Kartik Thakur was living in Sweden as a migrant. Balwinder Singh-petitioner told his son that he could get permanent residency for him in Sweden for a sum of Rs.2,00,000/- Swedish Krona which is equivalent to Rs.16,47,000/- in Indian currency. Based on this assurance he (complainant) sold his land, availed a loan and sent a sum of Rs.15,47,000/- to the account as mentioned by Balwinder Singh Khaira-

petitioner. A sum of Rs.1 lac in cash was also paid. Despite making the said payment of Rs.16,47,000/- his son had not been granted residency in Sweden and therefore the petitioner had cheated him.

The Counsel for the petitioner *inter alia* contends that the allegations against the petitioner are completely baseless. In fact the complainant had duped the family of the petitioner in connivance with his son. Jatinder Singh the brother of the petitioner was defrauded of Rs.9 lacs on the pretext of sending him abroad to Canada. He has made references to the bank account statements of the father and brother of the petitioner (Annexure P-2 and P-3). He contends that the petitioner was otherwise in custody since 01.08.2022 and only one prosecution witness out of 10 had been examined, pursuant to which an application had been moved to summon three persons as additional accused namely, Kulwant Kaur, Gurvir Singh and Balwant Singh. Thus, as the trial of the present case is not likely to be concluded in any time soon, the further incarceration of the petitioner was not required and he ought to be granted the concession of bail.

The Counsel for the State on the other hand contends that the petitioner is the main accused and took a huge amount of money on the pretext of getting permanent residency for the son of the complainant in Sweden. He had left the country and had returned only in August 2022 and was arrested at the Airport as there was an LOC pending against him. The conduct of the petitioner and the allegations against him did not entitle him to the grant of bail.

The Counsel for the complainant while supporting the contentions of the State, contends that the petitioner did not deserve the concession of bail as he had escaped from India after having cheated the

complainant of a sum of Rs.16,47,000/-. There was every possibility that he would abscond in case he was granted the concession of bail.

I have heard learned Counsel for the parties at length.

The veracity of the allegations and counter allegations levelled by the petitioner and the complainant shall be established during the Trial. Admittedly, the petitioner is in custody since 01.08.2022 and only one prosecution witness has been examined out of 10 cited prosecution witnesses. Since an application under Section 319 Cr.PC had been moved, the Trial of the present case is not likely to be concluded any time soon. The passport of the petitioners stands deposited with the investigating agency as has been pointed out by the State Counsel. Therefore, the possibility of absconding may not arise. The case is otherwise triable by the court of a Magistrate. This Court in case bearing **CRM-M-24033-2021(O&M)** titled as **Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab** Decided on **31.08.2022** has held that in cases triable by the Magistrate unless there are serious allegations of the accused absconding from trial, or tampering with the evidence, bail should only be declined in exceptional circumstances. In the present case, nothing exceptional has been pointed out as to why bail ought to be declined to the petitioner. Neither has the State expressed any serious apprehension of either the petitioner being a flight risk or likely to tamper with the evidence if he was granted the concession of bail.

Keeping in view the aforementioned facts the further incarceration of the petitioner is not required.

Thus, without commenting on the merits of the case, the petitioner-**Balwinder Singh Khaira** son of Sh. Braj Raj Singh is ordered to

be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the present case.

In addition, the petitioner (or any one on his behalf) shall prepare a FDR in the sum of Rs.5,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

November 30, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>