

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(107+220)

CRM-M-53441-2021 (O&M)
Date of decision:- 22.02.2022

Ajay Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Preetinder Singh Ahluwalia, Advocate for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

Mr. Sanjeev Kumar Arora, Advocate for the complainant.

...

SUVIR SEHGAL, J. (ORAL)

Heard through video conferencing.

CRM-6046-2022

Application is allowed as prayed for.

Order dated 23.11.2021 passed in CRM-38093-2021 in CRM-M-39508-2021 and copy of receipts dated 30.10.2021 and 07.02.2022 are taken on record as Annexures A-1 to A-3, respectively.

CRM-M-53441-2021

This is the second petition filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.48, dated 24.09.2020, Annexure P-1, registered for offences under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and Section 13 of the Punjab Prevention of Human Smuggling Act, 2012, at Police Station Arif Ke, District Ferozepur. The first petition (CRM-M-34123-2021) was withdrawn by the petitioner on 15.09.2021, Annexure P-4, with liberty to file a fresh one.

As per the case of the prosecution, FIR, Annexure P-1, has been registered on the complaint of Charanjeet Singh, on the allegation that Ajay Kumar (present petitioner) assured that the nephew of the complainant and another boy will be sent abroad and deal was settled for a sum of Rs.42.50 lacs, out of which Rs.19 lacs were deposited in the bank accounts of the petitioner in the year 2019. However, no development took place for a period of two years and, on enquiry, complainant came to know that the petitioner had submitted forged documents of the boys with the Canadian Embassy resulting in rejection of their applications and ban for a period of five years. When the petitioner, who had committed similar fraud with number of other persons, was confronted, he started threatening the complainant. Entire family of the petitioner, including his mother, Sunita Choat, his father, Harbhajan, and his sisters, Pooja and Vandana, as well as his wife, Sunita, are involved in the conspiracy.

Counsel for the petitioner submits that the allegation against the present petitioner is that a sum of Rs.19 lacs was deposited in two different bank accounts of the petitioner. He submits that out of the said amount, an amount of Rs.2 lacs was returned and his mother has already deposited a sum of Rs.5 lacs vide receipts, Annexures A-2 and A-3, pursuant to order passed by this Court in CRM-M-39508-2021, Annexure A-1, and she has been released on regular bail by this Court. Without admitting the allegations, counsel has instructions to state that in so far as the balance amount of Rs.12 lacs is concerned, the petitioner will deposit Rs.3 lacs at the time of being released on bail and the balance amount will be deposited

by him in three installments of Rs.3 lacs each spread over a period of six months. He has further instructions to state that both the petitioners as well as his mother will furnish affidavits to the effect that in case they commit any default, the amount deposited by them be forfeited. Counsel submits that the offences alleged against the petitioner are triable by a Magistrate, investigation is complete, challan has been presented and the petitioner, who is in custody since 28.07.2021, is no longer required for custodial interrogation.

Per contra, learned State counsel upon instructions from ASI, Amarjit Singh, has opposed the petition and has filed Custody Certificate dated 21.02.2022, which is taken on record. He is assisted by Mr. Sanjeev Kumar Arora, Advocate for the complainant. It has been urged that not only the petitioner, but even his relatives are involved in the racket of swindling innocent people on the pretext of sending them abroad. Upon instructions, he is not in a position to deny the fact that final report under Section 173, Cr.P.C. has been presented on 25.10.2021.

Having considered the submissions of the counsel for the parties, this Court is of the view that the material collected by the prosecution would remain debatable. The petitioner, who is in custody for the last more than six months, would be entitled to be released on bail as the trial is yet to start and will take time to conclude.

Without delving into the merits or de-merits of the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

The petitioner shall deposit a sum of Rs.3 lacs with the trial court at the time of his release on bail and another sum of Rs.9 lacs in three installments spread over a period of six months. The amount deposited by the petitioner will be kept in a Fixed Deposit with a Public Sector Bank for a period of one year with instructions for automatic renewal. The deposited amount along with accrued interest shall be disbursed to the party, who is found entitled to the same on the conclusion of trial. This deposit will be without prejudice to the right of defence of the petitioner. The petitioner as well as his mother, Sunita Choat, will file an affidavit giving an undertaking that in case they commit any default, the amount deposited by them shall be forfeited.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

22.02.2022
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No