IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-119-2023
Date of decision: 21.09.2023

Avtar Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Bhavyadeep Walia, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

Mr. Sarvesh Malik, Advocate, for the complainant.

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AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.259, dated 24.11.2022 registered under Sections 420 and 120-B IPC and Section 13 of the Punjab Travel Professionals (Regulation) Act, 2014, at Police Station City Moga, District Moga.

2. The facts as narrated in the FIR and the status report filed by the investigating agency are that co-accused-Narinder Singh was running a travel agency namely M/s Guru Nanak Trading and Trade Centre, Kotkapura bypass, Moga, of which petitioner was a partner and since they had earlier sent the nephew of the complainant Kashmir Singh to Dubai, he contacted Narinder Singh on 05.09.2020 for sending his son Lovepreet Singh to New Zealand. The accused offered to obtain a work permit for

New Zealand, within a period of 3 months for a total amount of Rs.11 lacs. Pursuant to the agreement, the complainant started paying the above amount in installments, on which he received an offer letter, a visa and an air ticket from Amritsar to Dubai, of which he was informed that it had not been confirmed and thus a new ticket in its place will be given. Thereafter, when he approached the petitioner and his co-accused on several occasions that the visa was fake, they started making false excuses. Thus, neither the work was done nor the amount paid was returned. Finally, an FIR was lodged.

3. Learned counsel for the petitioner submits that the amount was taken by Narinder Singh-co-accused of the petitioner, who was named in the FIR and as promised a visa was provided, which was a genuine one. The petitioner has been falsely implicated and as the allegations against him are concocted. He is not involved in any other case.

4. Learned State counsel while relying on the status report filed by way of affidavit of Sukhwinder Singh Brar, Deputy Superintendent of Police (City), Moga, submits that the petitioner as also his co-accused had duped the complainant in the garb of sending his son to New Zealand. It has been ascertained that out of the total agreed amount of Rs.11 lacs, Rs.6,95,599/- was transferred to the account of the firm through RTGS as also cash payments were made in the office in the presence of both, the co-accused as well as the petitioner. However, the visa provided was found to be fake, with regard to which a reference is made to Annexure R-1, attached therewith. The name of the employer with whom the son of

the complainant was to be given a job as assured by the petitioner and his co-accused, was Wake's Fruit Company Limited, New Zealand, which during investigation, was found to have been closed vide resolution dated 31.03.2017. A copy of the shareholders' special resolution has been attached as Annexure R-2, to fortify the said submission. All ingredients of the offences as mentioned in the FIR are fulfilled against the petitioner and his co-accused in the present case. The investigation is still going on. The custodial interrogation of the petitioner is necessary to recover the alleged amount as also to ascertain the other persons involved in immigration fraud. There is every apprehension to influence the investigation, influence the witnesses and cause threat to the complainant. The petitioner being engaged in the trade of sending people abroad, he is a flight risk.

5. Learned counsel for the complainant submits that his son was interested in going to New Zealand, for which purpose he approached the petitioner as also his co-accused, who were running a travel agency and an agreement to pay an amount of Rs. 11 lacs was made for securing a visa and a job. He alleged that out of the said amount, Rs.8 lacs were paid by way of cash and the remaining through RTGS but he received fake visa and offer letter. He has been stalled for 2 years on the pretext of false promises and his money has not been refunded, which he borrowed from several persons, who are also pressurising him to return the same. Thus, he prays for the dismissal of the petition.

6. Heard learned counsel on either side.

7. It is apposite to refer to the relevant paras of the status report,

which read thus:

> "5. That on the basis of said application, enquiry was conducted by Anti Human Trafficking Unit, Moga. During enquiry of said application it was found that accused Narinder Singh is running his travel agency under the name and style of M/s Guru Nanak Trading and Trade Centre, Kotkapura bypass, Moga. In the month of August 2020 complainant visited the office of Narinder Singh, at that time his partner Avtar Singh (Petitioner) was also found present there. Complainant discussed with them about sending his son to New Zealand on work permit. Then petitioner and Narinder Singh assured the complainant Singh assured the complainant that they will send the son of complainant to New Zealand on work permit and they demanded Rs.11 lakhs from the complainant by assuring him that they will get sanctioned the work permit within 3 months. After few days of that complainant alongwith his son Lovepreet Singh visited the office of accused and paid Rs.50000/- in advance and also handed over the passport of Lovepreet Singh to accused as per their demand. After about few days of that accused Narinder Singh contacted with complainant and informed him that offer letter of Lovepreet Singh has been received and he demanded Rs.30000/- from him. On this Lovepreet Singh alongwith his relative Jaswant Singh visited the office of accused at Moga and paid Rs.30000/to them. After about one month of that accused Narinder Singh sent the copy of visa of Lovepreet Singh through phone to the complainant and directed them to arrange the remaining amount. As per demand of accused, complainant transferred Rs.1 lakhs from his account no.03711000114421 in the account of M/s Guru Nanak Trading and Trade Centre (firm of Narinder Singh) on 17.12.2020 and that on 24.12.2020 he deposited Rs.1,56,500/in the account of Narinder Singh and in the month of January 2021 the complainant had paid Rs.2 lakhs in cash in the office of accused and after few days of that Lovepreet Singh alongwith his relative Jaswant Singh visited the office of accused and paid Rs.1 lakhs to him. After that accused sent the air ticket of 18.05.2021 from Amritsar to Dubai to the complainant by saying that after staying few days in Dubai they will send Lovepreet Singh to New Zealand. But after that accused Narinder Singh informed the complainant that air ticket has not been confirmed by the airlines and he will send the new ticket soon. After that accused persons started making false excuses to the complainant. In this way

> the accused had neither send the son of the complainant to New Zealand nor return his amount of Rs.6,96,500/and they had played a fraud with the complainant. After completion of enquiry, instant case has been registered.
> 6. That during investigation of the case, on 20.01.2023 the petitioner had joined the investigation of the case in compliance of order passed by this Hon'ble Court, whereas on 21.01.2023 accused Narinder Singh was arrested by the police.
> 7. That during investigation of the case, the visa of New Zealand send by the accused on the name of Lovepreet Singh was checked online by entering the requisite details on the Immigration Website of Government of New Zealand and said visa was found to the fake as details of visa entered on said website does not match with current visa issued by the department. Copy of same is attached herewith as Annexure R-1. Apart from this during investigation of the case, it was found that petitioner and Narinder Singh had also informed the complainant that job of Lovepreet Singh has been secured in Wake's Fruit Company Limited, New Zealand. During investigation of the case it was found that said company has already closed vide resolution dated 31.03.2017. Copy of Shareholders Special Resolution is attached herewith as Annexure R-2."

8. It would be worthwhile to make reference to the judgment in the case of **P. Chidambaram vs. Directorate of Enforcement,** (2019) 9 SCC 24, wherein Hon'ble The Supreme Court has observed that, "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail.

Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. <u>Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.</u>"

9. Adverting to the case at hand, co-accused, Narinder Singh was arrested on 21.01.2023 and is since in custody. The petitioner was granted interim anticipatory bail on his specific stand taken in para 11 of the petition that the work visa and offer letter provided to the son of the complainant were genuine/ not found to be fake. In addition, he has made contradictory statements in paras 4 and 9 stating that the whole amount had been paid to Narinder Singh in his absence and that he had nothing to with the same, while in para 7, it is contended that there exists no proof of the payments. Furthermore, in para 13, it is submitted that the flights were not operating due to the lockdown but since then 2 years have passed and no further action has been taken. It is thus apparent that the petitioner has not specifically denied his involvement either in the business or the process of obtaining visa, etc. for the son of the complainant.

10. The present matter remained pending for want of information regarding the same and after a number of opportunities sought and granted, the investigating agency has been able to verify that not only was the visa fake, even the offer letter provided of the company namely; Wake's Fruit Company, Hastings, New Zealand, involved in the business of growing apples had ceased to carry on its business since October, 2017,

which stood substantiated by the resolution for dissolution, Annexure R-2 appended with the State reply, which reads thus:

> "Resolved:
> THAT the company is to be wound up and all its assets be distributed and liabilities paid.
> THAT pursuant to Section 318 of the Companies Act 1993 and to this special resolution, since the company has ceased to carry on business and is not longer required, being grounds for removal under Section 318 of the Companies Act 1993, that the registrar of companies be requested to remove the company from the Register and that GC Wake, a shareholder of the company be authorised to make such application."

11. During the course of investigation, an amount of Rs.6,95,000/-out of the total amount of Rs.11 Lacs was as a matter of fact found to have been paid by the complainant to M/s Guru Nanak Trading and Trade Centre, of which the petitioner is stated to be a partner. The investigation of the case is stated to be going on and custodial interrogation of the petitioner is required to unearth the truth and involvement of other persons, it being a case of an immigration fraud, which are on the rise and the amount involved is yet to be recovered.

12. Gainful reference can also be made to **CBI vs. Santosh Karnani**, (2023) SCC Online SC 427, **Sadhna Chaudhary vs. State of Rajasthan,** (2022) SCC OnLine SC 869, **Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal and Ors.**, 2020 SCC Online SC 1089, wherein while expounding the law on anticipatory bail, Hon'ble The Supreme Court had relied on **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, which after due deliberation on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 held thus:

> "i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
> ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
> iii. The possibility of the applicant to flee from justice;
> iv. The possibility of the accused's likelihood to repeat similar or the other offences.
> xx xx xx"

13. It is manifestly clear that anticipatory bail is not a right that may be granted indiscriminately. The Court must meticulously assess all the facts and circumstances and only after its utmost satisfaction, bestow the same in extraordinary circumstances, where all the factors and parameters are met and there is no likelihood of him obstructing the path of justice.

14. In **State represented by the C.B.I. vs. Anil Sharma,** 1997(4) R.C.R.(Criminal) 268, Hon'ble The Supreme Court had observed that in cases where serious allegations have been alleged and the truth needs to be elicited from the accused, the same can only be done through the custodial interrogation as compared to questioning a suspect, who is already on anticipatory bail.

15. Keeping in view the facts and circumstances of the case and the judgments referred to above, grant of protective umbrella of pre-arrest bail to the petitioners will hamper the thorough and effective investigation to discover the modus operandi and elicit the truth, that coupled with an apprehension of him influencing and threatening the witnesses, tampering with the evidence and fleeing from justice since he is himself involved in business of immigration, this Court is not inclined to grant the concession

of anticipatory bail to the petitioners. Resultantly, the present petition is dismissed.

16. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner are to be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

21.09.2023
Ankur

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No