

209-1

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

**CRM-M-3099-2023
Date of Decision: 19.05.2023**

Balkar Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Pardeep Singh Poonia, Advocate and
Mr. Pulkit Dhanda, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana
for the respondent/State.

Mr. Raj Kumar Rana, Advocate
for the complainant.

HARSH BUNGER J.

1. Petitioner (Balkar Singh) has filed the present petition under Section 438 of the Code of Criminal Procedure seeking grant of anticipatory bail in case FIR No.893 dated 04.10.2022, under Sections 120-B, 370, 384, 406 & 420 of the Indian Penal Code and Sections 10 & 24 of the Immigration Act, registered at Police Station Shahabad, District Kurukshetra, Haryana.
2. Upon issuance of notice, reply by way of affidavit dated 15.02.2023 of Mr. Randhir Singh, Deputy Superintendent of Police, Shahabad, Kurukshetra has been filed on behalf of State of Haryana, which

is already on record.

3. Briefly, the aforesaid FIR was registered on the statement of one Sanjiv Kumar s/o Gurdev Singh, who had stated that his family comprises of his mother, namely Krishna Devi, and two brothers, namely Karambeer and Gurvinder Singh. Said Gurvinder Singh is stated to be the younger brother and he was interested in going abroad in search of work. The accused persons, namely Prince @ Babu s/o Raghbir, Bittu s/o Nachatar Pal and Balkar Singh s/o Garib Singh (petitioner) contacted the complainant's family and claimed that they have sent many people abroad and secured jobs for them. They further claimed that they can also send the complainant's brother (Gurvinder Singh) abroad. It is stated that the said accused persons repeatedly visited the complainant's family and informed that their several groups are working abroad and there shall be no shortcomings in their work. The aforesaid accused persons are stated to have told the complainant that they would send the complainant's brother (Gurvinder Singh) abroad as soon as possible and at the least possible prices, whereupon the complainant's family started believing them and thereafter the accused persons started frequently visiting the complainant's house. It is stated that firstly they came to the complainant's house on 07.06.2022 and after 2-3 visits, the said accused persons asked the complainant's family that if they have made up their mind then they would send Gurvinder Singh to Italy and arrange work for him there for an amount of Rs.15,00,000/-. It is stated that the complainant and his family arranged the money from their relatives and friends in order to send Gurvinder Singh abroad and thereafter they asked the accused persons to come to their house at Shahabad. Accordingly, the accused persons visited the complainant's house on 02.07.2022 and at that time, complainant, along with mother and both the brothers, was present at

the house. It is further stated that the complainant party handed over Gurvinder Singh's passport, his photographs and some other documents along with an amount of Rs.15,00,000/- to the accused persons, whereupon the said accused persons told the complainant party that they would arrange for departure of Gurvinder Singh from the Delhi Airport in the month of July, 2022. As per the complainant, all the three accused persons thereafter visited his house and informed that they have successfully made the necessary arrangements for sending Gurvinder Singh abroad and on 11.07.2022, their men will pick up Gurvinder Singh and accompany him to Delhi and assure his departure from there. Accordingly on 11.07.2022, one Bunty along with four other men, who were also to be send abroad, came and took the complainant's brother Gurvinder Singh along with them. It was told that Gurvinder Singh along with the other persons will be boarded from Delhi Airport and firstly they will reach Turkey then Serbia and then will finally reach Italy. As per the complainant, a man from Karnal, namely Amanpreet, also accompanied his brother Gurvinder Singh in the said departure proceedings. According to the complainant, he had a conversation with his brother Gurvinder Singh on 12.07.2022, who told that he had reached Turkey. Thereafter on 13.07.2022, the complainant received an S.M.S. on his phone from Gurvinder Singh that he has reached Serbia. It is stated that on the very same day, the complainant had a conversation with the accused Prince @ Babu over the phone, who told that his brother had reached abroad and he would finally reach Italy within a period of 2-3 days. On 14.07.2022, the complainant is stated to have received a call from mobile number 7056122653, from his brother Gurvinder Singh, who told that he was being taken by the agents from Serbia to Romania *via* some donkey

route. It is alleged in the complaint that on 18.07.2022, the complainant received a call from his brother, who told that he was in Serbia and being taken through dangerous routes. He also told that he was also facing difficulties in sustaining himself as the agents had not made the necessary arrangements. It is further alleged that on 21.07.2022, the complainant's brother again called the complainant and told that he was at the border and was kept hidden in some corn and sunflower field, where no food or water was available. It is stated that whenever the complainant talked to his brother Gurvinder Singh on phone, i.e. on 17th, 18th and 19th of July, 2022, he told that he was being taken through dangerous routes by the agent and was not being fed food or water and he was also being beaten up by the agent, due to which, he apprehended danger to his life. The reason behind all the aforesaid torture is stated to be the fact that the accused Balkar Singh (petitioner) and his nephew Prince @ Babu had not yet made the payment to the agent, who was taking the complainant's brother along with him. It is alleged that on 22.07.2022, the complainant had a last conversation with his brother Gurvinder Singh and thereafter he could not contact his brother for the next two to three days, however, when the complainant contacted the accused persons then they told that Gurvinder Singh had been arrested by the police at abroad and it would not be possible to have any conversation with him for the next two to three months. It is mentioned in the complaint that upon suspicion, the complainant tried to contact the Indian people living abroad *via* Facebook and other social media platforms and finally on 29.09.2022, an unknown indian told him that a person's dead body was found in Romania, around a Village named Cenia, on 24.07.2022, which was taken into custody by the Romania police, and the photograph of the said dead body was also

shared to the complainant by the aforesaid unknown person over the phone. As per the complainant, he, upon looking at the appearance and clothes of the said dead body, believed that the same was of his brother Gurvinder Singh, however, on the other hand, the accused persons were giving false assurances that his brother was alive in jail. The complainant is stated to have send some indian people to the Tamloolia Police Station, from where, they confirmed that the aforesaid dead body was of the complainant's brother Gurvinder Singh. It is alleged that the accused persons may have got the complainant's brother murdered and sold his organs. Accordingly, it was alleged that the aforementioned accused persons have defrauded him on the pretext of sending his brother Gurvinder Singh abroad and thereafter murdered him.

4. Apprehending arrest, the petitioner filed an application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail before the Court of Sessions Judge, Kurukshetra, however, the same was dismissed vide order dated 07.01.2023 (Annexure P-5). Hence, the present petition has been filed by the petitioner.

5. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case for the sole reason that the petitioner is uncle (*chacha*) of co-accused Prince @ Babu. It is submitted that the petitioner is an agriculturist by profession and has got no relation with the alleged crime or allegations levelled in the present petition. It is stated that the petitioner has been named in the present FIR only to extort money. While referring to Annexure P-1, learned counsel for the petitioner further submits that the complainant party has already entered into a settlement/compromise with other co-accused-Gurjeet and Bittu, whereby

they have received an amount of Rs.15,00,000/- from the said main accused, out of the total settlement amount of Rs.30,00,000/-. It is next submitted that the co-accused Prince @ Babu and Bittu are in judicial custody and challan in this case already stands presented before the Court of competent jurisdiction.

6. Learned counsel for the petitioner further submits that the petitioner is implicated in this case only on the basis of alleged disclosure statement of co-accused Bittu, who had stated that he had given the passport and other relevant papers along with an amount of Rs.1,50,000/- to the petitioner for sending complainant's brother Gurvinder Singh abroad. It is contended that there is no evidence on record to show the complicity of petitioner in the said crime apart from the bald allegations levelled by the complainant party. Learned counsel for the petitioner contends that the petitioner is ready and willing to join the proceedings/investigation, and accordingly, prayer for grant of anticipatory bail has been made.

7. Per contra, learned State counsel and learned counsel for the complainant have opposed the prayer of petitioner for grant of anticipatory bail on the grounds of seriousness and gravity of the offences. It is submitted that the petitioner is specifically named in the FIR in question and he is also involved in another case FIR No.54/2017, under Sections 148, 149, 323, 325 and 506 of the Indian Penal Code, registered at Police Station Naggal, District Ambala. It is next submitted that as per the disclosure statement of co-accused Bittu, the petitioner had taken passport and other relevant papers along with an amount of Rs.1,50,000/- for sending complainant's brother Gurvinder Singh abroad, thus custodial interrogation of the petitioner is required in this case to extract true facts and accordingly, he does not

deserve the concession of anticipatory bail.

8. I have heard learned counsel for the respective parties and have also perused the paper book as well as the status report.

9. Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

10. The petitioner has been specifically named in the present FIR and specific role has been attributed to him. Moreover, his involvement in this case has also been disclosed by co-accused, namely Bittu.

11. As per the status report, the petitioner has no clear antecedents as he is also involved in one more case bearing FIR No.54 of 2017, registered under Sections 148, 149, 323, 325 and 506 of the Indian Penal Code, at Police Station Naggal, District Ambala.

12. In my considered view, custodial interrogation of the petitioner is very much required and necessary in this case for complete and effective investigation, so as to recover the amount taken by the petitioner and also to unearth the truth and also the *modus operandi* of such activities alleged against the petitioner involving other persons. In case custodial interrogation is denied to the investigating agency, that would leave many loose ends, gaps and lacuna in the investigation, thus adversely affecting the case.

13. In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R. (Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful information.

14. Keeping in view the above facts and circumstances, the petitioner in the present case is not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 of the Code of Criminal Procedure seeking grant of anticipatory bail to the petitioner in case FIR No.893 dated 04.10.2022, under Sections 120-B, 370, 384, 406 & 420 of the Indian Penal Code and Sections 10 & 24 of the Immigration Act, registered at Police Station Shahabad, District Kurukshetra, Haryana; is hereby dismissed.

15. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case, which are only for the purpose of adjudicating the present bail petition.

16. All pending application(s), if any, shall also stand closed.

19.05.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No