Neutral Citation No.2023:PHHC:044475

101 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14296-2023
Date of decision : 24.03.2023

Dolly Arora @ Joti @ Dolly @ Daily Arora .....Petitioner

versus

State of Punjab ..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ
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Present :- Mr. Narinder S. Lucky, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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RAJESH BHARDWAJ, J.

Petitioner has approached this Court praying for grant of anticipatory bail in case FIR No.17 dated 04.02.2023, under Sections 406, 420, 465, 467, 468 and 471, 120-B of IPC and Section 13 of Punjab Travel Professional (Regulations) Act, 2014, registered at Police Station Phase-1, District SAS Nagar.

As per facts of the case, the complaint was lodged before the police by Noil son of Murthy. It was alleged that he met Ms. Navjot Kaur who was working as a consultant at Birla G Visa and Immigration Office, located at K&B Tower F465, Phase 8B Second Mohali, regarding sending his friend Abhishek to Canada on Work Visa. He was told that the expenses of Rs.14,00,000/- to be paid and was introduced with Mr. Jaideep Singh and Mr. Karan Deep as head of immigration office. On their asking, he paid Rs.2,00,000/- in the name of process fee. The accused again contacted him and demanded more money. They were assured if they failed to go abroad, their money would be returned. On the name of biometrics, again the demand of 500 dollars i.e. Rs.37,111/- was made. Though, Rs.2,00,000/- were demanded on 12.07.2021, however, they were able to pay only Rs.60,000/-. Despite repeated request neither the Visa was given nor the money was returned. However on insistence of the complainant, accused issued him two cheques. However, on presentation of the same, both the cheques bounced. Thereafter, the accused kept on dilly-dallying the complainant and when they went to their office, it was found locked. It was alleged that Jaideep had cheated the complainant for Rs.8,30,000/- on the name of sending them abroad. Request was made to take legal action. On the basis of the complaint, formal FIR was lodged and investigation commenced. During investigation, name of the petitioner also surfaced as a co-conspirator. Apprehending arrest, she appeared before the Court of learned Sessions Judge, SAS Nagar, Mohali praying for grant of anticipatory bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge declined the same vide his order dated 09.03.2022. Aggrieved by the same, petitioner is before this Court praying for grant of anticipatory bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in this case. It has been submitted that neither the petitioner is named in the FIR nor there is any recovery to be effected from her. It is submitted that petitioner happens to be the wife of co-accused Deepak Arora and thus, she has been arrayed as an accused. He submits that the disclosure made by co-accused is not an admissible evidence and thus, the false implication of the petitioner is writ large. It is submitted that the transactions as alleged by the complainant are totally of civil nature. It is submitted that the cheques which are allegedly bounced also do not constitute any offence against the petitioner as alleged in the FIR. He has submitted that the dispute is totally of civil nature and the prosecution of the petitioner in the same is totally an abuse of the process of the Court. He submits that though the petitioner has been prosecuted in other cases of similar nature, however, the petitioner has been either acquitted or granted bail in those cases.

On the other hand, learned State counsel, on instructions, has vehemently opposed the submissions made by counsel for the petitioner. He has further submitted that the petitioner and her husband are habitual offenders. He submits that during investigation, it was found that the real name of Jaideep is Deepak Arora and that of Karandeep was Pargat Singh. He submits that Deepak Arora is husband of the petitioner whereas Pargat Singh is brother of the petitioner. It is submitted that all the three are habitual offenders. He submits that the husband of the petitioner, Deepak Arora is facing prosecution in 111 other cases of similar nature whereas, the petitioner is involved in 13 other cases of similar nature. He has submitted that during investigation, it has been found that the bank account which is in the name of Deepak Arora, petitioner is the nominee of that account. He submits that the bank account which was opened in the name of Jaideep, the petitioner is nominee of petitioner in that account. He further submits that there is a transaction of money in that account. He further submits that the petitioner in conspiracy with her husband Deepak Arora has opened the Firm in the name of Birla G Visa and Immigration Company and thus, they are carrying out a racket by duping the innocent citizens on the name of sending them abroad. In some of the cases, petitioner has been acquitted but as per the record, petitioner has been convicted also in some of those cases. He further submits that as already submitted, during investigation, it was found that the real name of Jaideep is Deepak Arora, who is none other than the husband of the petitioner. He submits that husband of the petitioner is behind bars in some other cases and the investigation is at threshold. He has submitted that the petitioner being a habitual offender does not deserve the grant of anticipatory bail which would hamper the investigation and thus, she does not deserve the concession of anticipatory bail.

I have heard counsel for the parties and perused the record.

Apparently, the investigation of the case is under progress. There is no denial of the fact that husband of the petitioner is involved in 111 other cases of similar nature whereas, the petitioner is involved in 13 other cases. So far during investigation as submitted before this Court, the complicity of the petitioner is *prima facie* found. As submitted by learned State counsel, petitioner is the nominee of the bank account which is in the name of Jaideep whose real name is Deepak Arora i.e. husband of the petitioner. The investigation being at threshold, the case needs to be thoroughly investigated to unearth the alleged conspiracy of the petitioner with the co-accused.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

"Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he 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; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

Either reject the application forthwith or issue an interim order for the grant of anticipatory bail."

As per the law settled by the Hon'ble Supreme Court, in *Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632*, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31.In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking *advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.*

The Hon'ble Supreme Court *in State Vs. Anil Sharma, (1997) 7SCC 187,* held as under:-

> *6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.*

Keeping in view the fact that the investigation is at threshold, the petitioner do not qualify for the grant of anticipatory bail and the same being devoid of any merits, is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

24.03.2023
m. sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No