

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

203

CRM-M-24693-2021

Date of decision : 06.02.2023

Ashok Kumar Sidhu @ Babbi

....Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Kanwarpal Singh Mahey, Advocate for
Mr. Vishal Nehra, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

Mr. Vipin Kumar, Advocate
for respondent No.2.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Cr.P.C. for grant of anticipatory bail in case FIR No.52 dated 29.04.2021 registered under Sections 406 and 420 of the Indian Penal Code, 1860 and Section 13 of the Punjab Travel Professionals (Regulation) Act, 2014 at Police Station Division No.1, Jalanhdar.

The above-said FIR was registered on a complaint made by complainant-Sucha Singh alleging that once the petitioner demanded amount of Rs.20,000/- from him and despite economic constraints, he paid the said amount to the petitioner. When the complainant demanded his money back, the petitioner issued a cheque bearing No.653795 amounting to Rs.20,000/- which was returned back by the Bank with the endorsement 'payment stopped by drawer'. Thereafter, the petitioner persuaded the complainant to send his son to Denmark on which the

complainant supplied the requisite documents and also paid a sum of Rs.4,43,200/- through different installments either in cash or through bank transfers to the petitioner. However, neither his son was sent to Denmark nor his money was returned by the petitioner.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The alleged occurrence is from 18.09.2018 to 19.10.2019 but the present FIR has been registered on 29.04.2021 after an unexplained delay. In fact, the complainant had issued a cheque in favour of the petitioner, which was dishonoured and to wriggle out of the same, the present case has been got registered against the petitioner. The petitioner has neither cheated anyone nor has caused any financial loss to the complainant. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is also ready and willing to join investigation.

On the other hand, learned State counsel has vehemently opposed the present petition and submits that for thorough investigation of the case and for recovery of cheated money, the custodial interrogation of the petitioner is required in the case.

Learned counsel for the complainant submits that the petitioner was granted interim anticipatory bail by this Court vide order dated 01.07.2021 subject to deposit of 50% of the disputed amount i.e. Rs.2,25,000/- with the trial Court on or before 16.07.2021. However, the petitioner has not deposited the said amount so far and enjoying the interim anticipatory bail granted to him.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. The petitioner has duped the complainant on the pretext of sending his son to Denmark and received an amount of Rs.4,43,200/- from him. However, neither the son of the complainant was sent to Denmark nor his money was returned by the petitioner.

Furthermore, investigation is still going on in the present case and for thorough investigation of the case and for recovery of cheated amount, custodial interrogation of the petitioner is necessary. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in ***State Vs.***

Anil Sharma : (1997) 7 SCC 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.”

Moreover, the petitioner has filed to comply with order dated 01.07.2021 passed by this Court whereby the petitioner was

granted interim anticipatory bail subject to the condition to deposit 50% of the disputed amount i.e. Rs.2,25,000/- with the learned trial Court.

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed and interim anticipatory bail granted to the petitioner vide order dated 01.07.2020 is vacated.

06.02.2023

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No