

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

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CRM-M-23494-2023

Date of decision: 19.07.2023

Kulwinder Kaur

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rishu Mahajan, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 438 of the Code of Criminal Procedure is for grant of anticipatory bail to the petitioner in case FIR No.1 dated 06.01.2023, registered under Section 420 IPC, at Police Station Gharinda, District Amritsar.

2. The brief factual matrix leading to the case is that one Baljinder Singh made a complaint against Harguvinod Singh, Kulwinder Kaur (petitioner), Gurnishan Singh and Rajbir Kaur, stating therein that the petitioner and her husband were running an immigration agency. Complainant alongwith his father and relative Sukhdev Singh visited their house, where the husband of the petitioner and their son were already

present. They were assured of a work permit for America, on payment of an amount of Rs.25,00,000/-. On 10.05.2019, the petitioner along with her husband and Sukhdev Singh went to the house of the complainant and received a cheque of Rs.4,50,000/-, upon which a promise to deliver the work permit within a period of six months was made. The said cheque was encashed on 18.05.2019 by the petitioner. On 29.11.2019, the complainant again handed over a sum of Rs.1,20,000/- to the accused. However, neither the work permit was arranged nor the said amount was returned. When the complainant requested several times for return of the amount, he was given a cheque of Rs. 4,70,000/- and he was assured that the same would be encashed. However, on presentation it got dishonored, regarding which a complaint under Section 138 of NI Act was filed against the petitioner, wherein she has been declared a proclaimed person. Thereafter, when the complainant approached the petitioner for refunding the amount, he was subject to abuse and threats at the hands of petitioner and her husband and stated that they will not return the money and the complainant can do whatever he wishes to. On the basis of the said allegations, the FIR in question was lodged against the accused persons.

3. Learned counsel submits that the petitioner has been falsely implicated in the present case. She and her family members have no knowledge of the alleged immigration business. Though the husband of the petitioner took a loan of Rs.4.7 lac from one Satbir Singh, who was having financial dealings with complainant-Baljinder Singh and in lieu of that, he had handed over a security cheque to him. However, out of the said amount, Rs.3.7 lac was returned to the said Satbir Singh and when the petitioner's

husband asked to return the cheque, he was threatened with dire consequences. He has filed a civil suit against Satbir Singh and Baljinder Singh, which is pending, while the complainant has also filed a case under Section 138 of NI Act. The petitioner is ready and willing to join the investigation and will cooperate with the investigating agency. Reliance is placed on **Bhadersh Bipin Bhai Sheth vs. State of Gujarat & Anr.**, 2016 (1) SCC 152 and **Rashmi Rekha Thatoi vs. State of Orissa**, 2012 (5) SCC 960.

4. On the other hand, learned State counsel opposes the prayer of the petitioner and contends that there are specific allegations against the petitioner and her husband of taking the money from the complainant, under the guise of providing a work visa but neither the same fruitified nor the amount in question was returned. In the enquiry conducted by the investigating agency, the allegations against the petitioner were found to be true as the alleged amount was encashed by the petitioner as well as the cheque which was given in lieu of the disputed amount was also got dishonoured. The police are still pursuing the matter and the money which the complainant was duped of, is yet to be recovered from her. Thus, her custodial interrogation is required. She is also likely to tamper with evidence and influence the witnesses. The petitioner being engaged in the trade of sending people abroad, she is a flight risk, thus he prays for the dismissal of the petition. Further, petitioner and her husband have been declared proclaimed persons in the case filed by the complainant under Section 138 of NI Act.

5. Heard the learned counsel for the parties and perused the file.

6. A gainful reference can be made to the judgment in **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, where 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. 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."

7. In the present case, the complainant-Baljinder Singh, is stated to have been defrauded by the petitioner and her husband of an amount of Rs.5.7 lac, paid by way of cheque and cash, on the pretext of sending him abroad. Even as per the investigation conducted by the police, the allegations leveled against the petitioner were found to be true. A cheque amounting Rs.4.7 lac was also issued by the husband of the petitioner, that on presentation got dishonored, regarding which a complaint under Section 138 NI Act, 1881 has been filed, in which, she as also her husband have been declared proclaimed person. The investigation in the case is going on

satisfaction, grant it only in exceptional circumstances, where all the factors and parameters are met and there is no possibility of him interfering in the path of justice.

10. Considering the facts and circumstances of the case and the judgments referred to above, an element of criminality cannot be ruled out at this stage and the allegations being of such nature, the permission to join the investigation with a protective umbrella of pre-arrest bail will hamper the thorough and effective investigation to discover the modus operandi and elicit the truth, that coupled with the apprehension of the petitioner influencing and threatening the witnesses or tampering with the evidence, or fleeing from justice since she has already been declared a proclaimed offender, this Court is not inclined to grant the concession of anticipatory bail to the petitioner.

11. The judgments cited on behalf of the petitioner are distinguishable on facts.

12. In view of the forgoing discussion, the present petition being devoid of merits is hereby dismissed.

13. 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

July 17, 2023

M.Kamra	Whether speaking/reasoned	:	Yes / No
	Whether reportable	:	Yes / No