

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

CRM-M-24891-2023

Date of decision : 16.05.2023

Akshay Awasthi

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Gourave Bhayya, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

1. The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.75 dated 14.04.2023 registered under Sections 420 and 120-B of the Indian Penal Code, 1860 at Police Station Civil Lines, Amritsar.

2. The above-said FIR was registered on the complaint made by Rakesh Singh alleging that Harpreet Singh working at Balaji Overseas cheated him on the pretext of sending his son abroad. Out of total amount of Rs.14,18,000/- the complainant has given Harpreet Singh amount of Rs.9,18,000/- through cheque and rest of the amount has been given in cash. However, the accused party failed to send his son abroad and even has not returned the money to the complainant.

3. Learned counsel for the petitioner, inter alia, contends that the petitioner has been falsely implicated in the present case. The

complainant has moved complaint against Harpreet Singh and not against the petitioner. The petitioner has not received any amount from the complainant. The name of the petitioner figured out during the enquiry as the license of Balaji Overseas is in the name of the petitioner. The license has been taken in the name of the petitioner on the saying of accused-Harpreet Singh as he was not eligible to take the license of immigration. The petitioner has not done any work in the said Balaji Overseas. There is also delay of more than 01 year in lodging of the FIR. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. Therefore, the present petition may be allowed.

4. Notice of motion.

5. On the asking of the Court, Mr. Joginder Pal Ratra, Senior D.A.G., Punjab, who is present in the Court, has accepted notice on behalf of the respondent-State and vehemently opposed the present petition on the grounds that the petitioner is the license holder of the said Balaji Overseas and he is the main person, who is running the said immigration firm and accused Harpreet Singh is his partner. The petitioner is also involved in 02 more cases of similar nature. For through investigation of the case custodial interrogation of the petitioner is required. Therefore, the present petition may be dismissed.

6. Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. During investigation, it has been found that the petitioner is license

holder of said Balaji Overseas and he was running the firm along with his partner Harpreet Singh. They have taken huge amount from the complainant on the pretext of sending his son to abroad. However, they neither sent the son of the complainant to abroad nor returned his money.

7. Moreover, the antecedents of the petitioner are also not good as he is already involved in 02 other cases of similar nature. It has been observed by the Hon'ble Supreme Court in case Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240 that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

8. Furthermore, investigation is still going on in the present case. 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 ensconded 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.”

9. 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.

10. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

16.05.2023
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(ASHOK KUMAR VERMA)
JUDGE

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