

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(105)

2023:PHHC:081857
CRM-M-30077-2023
Date of Decision: 09.06.2023

Mahavir

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Pawan Attri, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 438 Cr.P.C seeking the benefit of anticipatory bail to the petitioner in case FIR No.212 dated 27.4.2023 under section 24 of Immigration Act and sections 406 and 420 I.P.C, registered at Police Station, Sector 32-33 City, District Karnal.

As per factual matrix, the FIR in question was registered on the complaint of one Rajbir Singh, wherein it was alleged that accused Mahavir i.e. the present petitioner defrauded him on the pretext of sending his son to USA. It was alleged that Mahavir was known to his son Prince for a considerable long time and thus he succeeded in trapping his son for sending him to USA. Mahavir promised his son to provide him a visa from USA, where he will get a lucrative job. He asked for a sum of Rs.60 lakh for sending him to USA. The complainant borrowed the money from his friends and relatives and paid Rs.5 lakh to the petitioner. After having received the amount petitioner kept on dilly dallying and neither visa was given nor money was returned. However, on 20.7.2022 Mahavir managed the entry of his son at the Airport on a promise that he would go to USA by that flight. Later on, son of the complainant rang him up and informed that

he had been sent to Serbia instead of USA and thus Mahavir had cheated them. Thereafter, son of the complainant was sent to Romania, Italy and Portugal by taking another amounts. A request was made to take legal action against the culprit.

On the basis of the complaint FIR was registered and investigation commenced. Apprehending the arrest, petitioner approached the court of learned Addl. Sessions Judge, Karnal for grant of bail, however, after hearing the parties, the same was declined vide order dated 18.5.2023. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that petitioner has been falsely roped in the present case. He submits that the only motive to implicate the petitioner in the present case is that he had filed a civil suit for recovery of amount from the complainant and thus as a counter blast to the same petitioner has been falsely implicated in the present case. It is submitted that there are bald allegations made in the FIR and there is no proof of giving amount to him by the complainant.

I have heard learned counsel for the petitioner at length and have gone through the records carefully.

From the allegations made in the FIR, it is apparent that there are specific allegations of having embezzled a hefty amount from the complainant on the pretext of providing job to his son in USA. The offer given was of Rs.60 lakh by the petitioner to the complainant, whereas the same was struck at Rs.55 lakh. On the asking of the petitioner, complainant paid an amount of Rs.5 lakh after borrowing the same from his friends and relatives. Thereafter, on different occasions various amounts were taken by the petitioner from the complainant, however, neither visa was granted nor

the money was returned. On being requested by the complainant, petitioner made his son to board a flight which took his son to the Serbia instead of USA. Thereafter, son of the complainant was taken to various countries. Hence, petitioner duped the complainant of a hefty amount on the pretext of sending his son to USA. Investigation in this case is at threshold and for a fair and free investigation custodial interrogation of the petitioner is required in the present case.

Hon'ble the Supreme Court in ***State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187*** has 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 suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he 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 task of disinterring offences would not conduct themselves as offenders.”

The Hon'ble Supreme Court, in ***Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632*** has held as under:-

“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.*

In the above said case, the Hon'ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual.

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances. Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in his favour.

Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

09.06.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No