IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-50354-2023
in CRM-M-31099-2023 (O & M)
Date of decision:05.12.2023

Sunil @ Sheela …... Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Anuj Kumar, Advocate,
for the applicant-petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Pawan Kumar Hooda, Advocate,
for the complainant.

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JASJIT SINGH BEDI, J. (Oral)

CRM-50354-2023

This is an application seeking advancement of next date of hearing i.e. 22.04.2024 fixed in the main case to some earlier date.

For the reasons mentioned in the application, same is allowed and the next date of hearing fixed in the main case is advanced to today i.e. 05.12.2023 and the matter is taken up for hearing.

CRM-M-31099-2023

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.166 dated 15/05/2023 (Annexure P-1) under Sections 406, 420, 506, 34 IPC (Sections 467, 468 and 471 IPC and Section 24 of the Emigration Act, 1983 added later on) registered at Police Station Rohtak Sadar, District Rohtak.

2. The present FIR came to be registered at the instance of Vijay Kumar who stated that the name of his uncle was Surender who was known to the accused persons. In 2019 all the accused came to his house and Sunil @ Sheela (petitioner) told his (complainant's) brother-Baljeet that he could send him (complainant) to America as his wife-Sonia lived in Spain and his brother's friend Vishal @ Sandhu were in the business of sending people abroad. Rs.35 lacs was the cost for the same. In December 2019, Sunil took his (complainant's) various documents such as passport, mark-sheets, Aadhar Card, PAN Card alongwith Rs.1.50 lacs and stated that the balance amount was to be paid when he (complainant) reached America. He (complainant) also attended a Course of CDC where he met Ravi and Vishal on a number of occasions. On 21.07.2022, he (complainant) received a call from Sunil that his U.S. Visa had been approved and a demand of Rs. 8 lacs was made. On 26.07.2022, Rs. 8 lacs were handed over to Sunil. On 20.08.2022, the demand of the remaining amount was made. As his (complainant's) father did not have the balance amount, they (complainant party) entered into an agreement to sell their land with one Mehtab and received a sum of Rs.30 lacs. On 04.09.2022, Sunil, Sonia and Vishal dropped him to the Airport and received the balance amount at his (complainant's) house. However, when he reached America, he was deported back immediately as his documents were found to be forged. On his returning back to the Delhi Airport, he (complainant) met Sunil and his wife alongwith his (complainant's) brother Baljeet. The accused assured him that they would send him to Spain within one month and took all his documents. However, he was not sent abroad and nor did the accused return his CDC certificate, passport and Merchant Navy certificates. On a demand

for the return of the amount spent being made, Rs.9,50,000/- was handed back through his uncle-Surender alongwith another amount of Rs.5 lacs. However, the rest of the money was not repaid. On the contrary, his documents had been taken away and a forged Dubai Visa had been pasted upon his passport.

During investigation on 16.05.2023, Sanjay (uncle of the complainant) produced a Pen Drive containing the audio recording of a telephonic conversation between the complainant, petitioner/Sunil @ Sheela and Sanjay

On 17.05.2023 the complainant submitted certain documents to the I.O. and got recorded his additional statement. A per those documents, the complainant had been sent to America and the American Immigration Department had sent him back from the Airport on finding the documents to be forged and accordingly Section 24 of the Immigration Act was added in the present case.

An application for obtaining the call details records of the mobile phone used by the accused and the complainant party was moved and while part of the record was obtained, some of the record was still awaited.

Bank records were also obtained, as per which a sum of Rs.1,02,000/- had been transferred in the account of the Vishal through a phone application.

As per the call detail records, mobile conversations took place between the complainant and the petitioner/Sunil @ Sheela. As per investigation, he had prepared the forged documents and had grabbed a huge amount from the complainant. On the basis of the documents collected during investigation, Sections 467, 468 and 471 IPC were added in the present case.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. The petitioner was only a mediator in the entire transaction and an amount of only Rs.25 lacs was paid to the accused and not Rs.35 lacs as alleged. The petitioner himself had received only Rs.1,20,000/- for the course of CDC which was mandatory prior to applying for a work Visa in the U.S. The complainant had received a valid and legal Visa from the United States which had been approved by the Embassy of the U.S. after going through all the documents. The complainant had concealed the fact that he had been deported from the America because of his own conduct as he was in drunken condition and failed to behave appropriately with the officers of the Immigration Department. The complainant had concealed the order through which he had been deported and had failed to produce any document which was fabricated by the petitioner. The family members of the complainant had admitted the fault of the complainant and had requested to return the amount except the expenses incurred at the time of the Visa. The petitioner had agreed to pay a sum of Rs.20 lacs. A sum of Rs.15 lacs had been paid to the complainant and the remaining amount of Rs.5 lacs had to be paid till 25.07.2023. However, the present FIR came to be registered with the collusion of the relatives of the complainant on account of his greed.

4. The learned counsel for the State and the learned counsel for the complainant while referring to the reply dated 07.07.2023, however, contend that serious allegations had been levelled against the petitioner. The money had been received by the petitioner and his co-accused. However, a

forged Visa had been provided to the complainant because of which on landing in America, he was deported back. Only Rs. 14,50,000/- had been returned against Rs.35 lacs paid by the complainant and his family members to the accused. The petitioner had got the stamp of another country pasted on the passport of the complainant to show that he had not gone to America despite the fact that the complainant had never been to the said country. All the relevant documents including the passport of the complainant were in the possession of the accused. As the offence was *prima facie* established and the recovery of the relevant documents was to be effected from the petitioner and his co-accused, he was not entitled to the grant of pre-arrest bail and therefore, the present petition was liable to be dismissed.

5. I have heard the learned counsel for the parties.

6. The Hon'ble Supreme Court in the case of ***'Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870'*** has held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

> *"It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.*
>
> *Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.*

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. ***In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail***.”

7. A perusal of the FIR and the investigation conducted so far would establish that the petitioner and his co-accused received a sum of

about Rs.35 lacs to send the complainant to USA. However, when he reached there, he was deported back on account of the fact that his Visa was found to be forged. It is the admitted position by the accused-petitioner that he had promised to return a sum of Rs.20 lacs which had been taken by him. Therefore, the accused/petitioner himself has partly accepted the allegations. Further, it is the case of the prosecution that the petitioner had got pasted a forged Visa of another country to show that the complainant had not gone to America. Therefore, the offence stands *prima facie* established. Even otherwise, the recovery of various documents including the passport of the complainant is to be effected from the petitioner and his co-accused. Therefore, the custodial interrogation of the petitioner is certainly required.

8. In view of the above discussion, I find no ground to grant the concession of anticipatory bail to the petitioner. Therefore, the present petition stands dismissed.

9. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

10. Since the main case has been dismissed, no order needs to be passed in the pending application(s), if any.

(JASJIT SINGH BEDI)
JUDGE

December 05, 2023
sukhpreet Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No