

CRM-M-32476-2023

2023:PHHC:164658

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(208)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32476-2023

Date of decision :20.12.2023

HARPAL SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. S.S. Cheema, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.54 dated 09.05.2023 registered under Sections 406, 420 IPC and Section 13 of Punjab Travel Professionals (Regulation) Act, 2014 at Police Station City Nawanshahr, District SBS Nagar.

2. The present FIR came to be registered at the instance of Navdeep Singh who stated that he was an agriculturalist. He met Harpal Singh (petitioner) in connection with a job placement. Harpal Singh informed him that he was in the business of sending people abroad to Portugal for an amount of Rs.10,00,000/-. Based on this information, he (complainant) paid a sum of Rs.3,50,000/- to Harpal Singh. However, neither was he sent abroad nor was the money refunded to him.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He had already returned an amount of Rs.2,85,000/- to the complainant which he had

received in lieu of the fee for the merchants Navy course. Relevant receipts would show that the amount had been repaid. In fact, the petitioner was neither a travel agent nor in the business of sending persons to foreign countries. Therefore, as the petitioner was ready and willing to join investigation, he was entitled to the concession of bail.

4. On the other hand, the learned State counsel while referring to the reply dated 31.07.2023, contends that one Amandeep Bassi had levelled similar allegations against the petitioner. The inquiry had been conducted by the DSP, Nawanshahr as per which a sum of Rs.3,07,200/- was paid to the petitioner for going abroad. A sum of Rs.10,00,000/- had also been demanded from Amandeep Bassi. Amandeep Bassi himself had paid Rs.3,00,000/- to the petitioner. It also transpired during the course of inquiry that the receipts produced by the petitioner-Harpal Singh were forged as the complainant stated that the petitioner had obtained their signatures and thumb impressions on printed papers at the time of handing over their passports to them and there were neither any revenue stamps affixed nor was any amount mentioned on the said papers. He, therefore, contends that as the offence was *prima facie* established, the petitioner was not entitled to the concession of anticipatory bail.

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 Live Law (SC) 870 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. When this matter had taken up for hearing, as this Court was not inclined to grant the concession of anticipatory bail, on 01.08.2023, the counsel for the petitioner sought time to seek instructions as to whether the petitioner was ready and willing to compensate the complainant. However, no such compromise could be arrived at and a statement was made in the Court that the petitioner had no instruction in the matter.

8. Coming to the merits of the case, a perusal of the FIR and the reply of the State dated 31.07.2023 clearly establishes that the petitioner demanded and received a huge amount of money from the complainant and one Amandeep Bassi to send them abroad. The receipts purportedly issued by the complainant and Amandeep Bassi to the petitioner have been found to be fabricated by the petitioner. Neither the complainant nor Amandeep Bassi was sent abroad nor the money was refunded to them. Therefore, the offence stands *prima facie* established.

Further, to unearth the entire nexus the custodial interrogation of the petitioner is certainly required.

9. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

10. However, the observations made hereinabove are only for the purposes of deciding this bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

20.12.2023
JITESH