

**210 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-35739-2023
Date of decision : 04.10.2023**

VIJAY KUMAR

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

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.88 dated 25.06.2023 registered under Section 420 IPC at Police Station City Nawanshahr, District SBS Nagar.

2. The present FIR came to be registered at the instance of Ram Parkash Mann who stated that he wanted to send his grandson Amit Mann to a foreign country. In January, 2022, he had gone to the chamber of an Advocate where he had met Vijay Kumar (petitioner). Vijay Kumar informed him (complainant) that his son was permanently settled in Italy and he could send his (complainant's) grandson to Italy as well. On an inquiry being made from one Lachman Dass, it transpired that the petitioner was indeed engaged in the business of sending persons abroad. On 17.01.2022, he along with his friend Lachman Dass went to the house of Vijay Kumar (petitioner) who promised to send his

(complainant's) grandson abroad for sum of Rs.12 lakhs. A sum of Rs.5 lakhs was demanded as an advance. On 18.01.2022, Rs.5 lakhs was paid in cash to Vijay Kumar (petitioner) in the presence of his friend Lachman Dass. Rs.7 lakhs was sought after the grant of the Visa. After a lapse of sufficient time, when Vijay Kumar did not send his grandson to a foreign country nor returned his money, he issued a cheque for Rs.4 lakhs drawn on Canara Bank in his (complainant's) favour on 27.07.2022 which came to be dishonoured. Thereafter, he submitted a complaint to the SSP, SBS Nagar, in which an inquiry was conducted during the course of which a compromise was effected with Vijay Kumar on 17.08.2022. However, in terms of the compromise, Vijay Kumar did not return Rs.4 lakhs. Legal action was sought.

3. When this matter had come up for hearing on 26.07.2023, it was argued by the learned counsel for the petitioner that the petitioner was only working as a Clerk in the office of Rajan Sareen, Advocate. The petitioner had obtained monetary help from the complainant through Lachman Dass and as a security, had given a cheque of Rs.4 lakhs to the complainant. On account of the Covid-19 pandemic, the petitioner had suffered losses in his business of running of a canteen because of which, he was unable to return the entire amount to the complainant. However, the complainant had moved false and frivolous complaints against the petitioner including one under Section 138 of the Negotiable Instruments Act.

4. On the basis of the arguments of the petitioner, notice of motion was issued for 16.08.2023. On the said date, the matter was

argued at lengthy after a status report dated 16.08.2023 had been filed by the State. As the Court was not inclined to grant the concession of anticipatory bail, an undertaking was given to return an amount of Rs.4 lakhs. The parties were to appear before the Mediation and Conciliation Centre of this Court to effect a formal compromise. To enable the petitioner to take part in mediation proceedings, his arrest was stayed. Despite the arrest of the petitioner being stayed, he neither returned the money in terms of the undertaking recorded in the order dated 16.08.2023 nor did he join mediation proceedings which took place on four different dates.

5. Today, the learned counsel for the petitioner has informed the Court that the petitioner was untraceable and incommunicado.

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

7. Admittedly, as per the police investigation, the petitioner received a sum of Rs.5 lakhs to send the son of the complainant abroad. With a view to effect a settlement, firstly a cheque for Rs.4 lakhs was issued in favour of the complainant which came to be dishonoured. Subsequently, yet another compromise was arrived at after the complainant had submitted a complaint to the Investigating Agency. However, the money was not returned. Once again, when this Court was not inclined to grant the concession of anticipatory bail, an undertaking was given to make the payment of Rs.4 lakhs. Once again, the said payment has not been made. It is apparent that the petitioner has tried to hood-wink the complainant, the Investigating Agency and this Court. He has absolutely no intention to return the money to the complainant. The

facts themselves *prima facie* establish the offence in question. Once the offence is *prima facie* established, the question of grant of anticipatory bail does not arise as has been held in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** 2022 Live Law (SC) 870.

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

(JASJIT SINGH BEDI)
JUDGE

04.10.2023
JITESH