

103

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

CRM-M- 37567 of 2023

Date of decision : August 03, 2023

Davinder Khan Rajpal**..... Petitioner****Versus****State of Haryana****..... Respondents****CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN*********

Present :-Mr. Mohd. Yousaf, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

*********PANKAJ JAIN, J. (ORAL)**

1. Present petition has been filed under Section 438 Cr.P.C. seeking pre-arrest bail in FIR No. 350 dated 06.06.2023 for offences punishable under Sections 406, 420, IPC, 1860 and Section 10 and 24 of The Immigration Act, 1924 registered at Police Station Shahabad, District Kurukshetra.

2. In the FIR it has been alleged as under:-

“To Hon'ble Anil Vij Sahib Ji, Home Minister Govt. of Haryana, Sub: Regarding embzelling of amount for sending abroad by Davinder Raj Pal, Harpreet, Harkrishan, Sayed Rashid Abbas, Bharat. Sir, Requested that I Geetanjali D/O Parkash Kumar is resident of Village Yaara P.O. Yara Tehsil Shahabad District Kurukshetra and I have got my file submitted for USA through Davinder Raj Pal r/o Nabha District Patiala Punjab, and they send me to Dubai on tourist Visa on 01.01.2023, and told me that they will send me America from Dubai after three months. Davinder has gone to Dubai on 31.01.2023 at 12 by Air, and on 01.02.2023 I went to Dubai at 7 a.m. by Air. He told me that two more girls will met me at Delhi Airport but no girl met me there. And on the same day I reached at Dubai at 12 p.m. I rang Davinder Raj Pal from Airport

but he switched off his mobile. Then Amzad met me on Dubai Airport and he left me at Aldar Hotel Sharja and gone. Davinder Raj pal was also there. Thereafter, he told me that I have to stay there for 15 days, and thereafter on the next day he got me another agent Sayed Rashid Abbas on next day Davinder Raj Pal took me along with him for 2-3 days to get job but I could not get any job. Suddenly, Davinder Raj Pal came back to India after locking the hotel room in the night from out side. Thereafter, I rang Abbas then he took me to Dubai from Sharja. Thereafter, he told me that he will send me to America and for the same he got deposited Rs.6,90,000/-from me in the account of different person in India, and he received Rs.1 lac in cash. On 27.02.2023 he send me to Azer Baijan Country and kept my mobile sim and gave me his two debit card by saying that money is there, and also said that at Airport a family will meet me which will go with me. On 27.02.2023 at 5 a.m. we left Airport for Azer Baijan Country Baku. When I reached at Airport he also did not attend my phone. I remained at Airport for four hours. At 6 p.m Abbas called me and booked hotel for me at Nod West, and he told me that after two days there will be my flight for America. Even after two days he did not send any ticket to me. Thereafter, 07.03.2023 he sent a ticket of Turki to me. On 9 p.m. I went to Airport but my ticket was not confirmed and I was enquired at Airport. Thereafter, at 1 A.M. I came back to Hotel. Thereafter I call Abbas on phone and he was making excuse that he will send me America after one or two days and I was not have any money with me nor I was having ATM Card, and he kept me without meal for 15 days. Thereafter, he got deposited Rs.5,90,000/- in the account of agent Harpreet, Harkrishan and Bharat and said me that my ticket for America is confirmed for 24.03.2023. On 22.03.2023 Abbas called me on the phone in the night that to deposit Rs.3,50,000/- in his account or keep that amount with Harpreet in India as guarantee. I told him that my parents are poor man and cannot give such amount, then if I cannot pay money then I should marry with him, and if I am not agreeing with the marriage proposal then he will kill me. I refused to give such amount to him and I told him that I do not want to go to America, and asked him to send me back to India. He threatened that

he will cut me into four pieces and will put my body in suit case, and will throw it no one will come to know about it and said that he have done the same with other girls like me. Thereafter, on 24.03.2023 I escaped from the Hotel and met one Indian Girl who was resident of Chandigarh who had gone there on student visa. I was having visa for one month which has expired. Thereafter I remained there after concealing myself and my parents deposited Rs.22,000/- as fine for me. Thereafter, my parents got booked a ticket for me of India. These agents after committing cheating with me, have sent me abroad by Donki whereas I was told that I will be send abroad legally. My parents have send me abroad by raising loan and obtained amount on interest. The mobile number of the agents are as under:- 1. Davinder Rajpal Nabha 8883122555, 9517999986, 2. Harpreet Jalandhar 81950297860, 01815090457, 3. Harkrishan Jalandhar 8968224822, 4. Bharat 981425514, Punjab. 5. Syed Rashid Abbas 971523144465 Dubai 60 11-3135 1321 91 96502 45963. Lastly, you are requested to take legal action against the above mentioned agents keeping in view the above mentioned facts and my amount got returned. Thanks. Sd/- Geetanjali.”

3. It is not disputed that the part of the consideration was transferred to the account of the petitioner as well.

4. Keeping in view the role assigned and the manner in which the complainant lady has been dealt with that too in foreign lands, this Court does not find it to be a fit case to exercise jurisdiction under Section 438 Cr.P.C.to grant pre-arrest bail.

5. As per settled law petitioner is required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In **Gurbaksh Singh Sibbia's case (supra)**, Apex Court has held that :-

“..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....

6. *Likewise while reiterating the law laid down in **Gurbaksh Singh Sibbia's case (supra)** Apex Court in **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1** held that:-*

“(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. “

Further Supreme Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. and another 2022 (4) RCR Criminal) 977** held as under:

“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. As per settled law (in **C.B.I vs. Anil Sharma, 1997(7) 187**) there is a qualitative difference between custodial interrogation and questioning a person insulated by pre-arrest bail. Investigation at this nascent stage cannot be allowed to be belayed.

8. The nature and the seriousness of the allegations levelled against the petitioner and his conduct are the relevant factors for the adjudication of the present petition.

09. In view of the aforesaid circumstances, this does not appear to be a fit case to grant discretionary relief of anticipatory bail to the petitioner. Consequently, the same is dismissed.

10. Needless to say nothing recorded hereinabove should be construed as expression on merits of the case

(PANKAJ JAIN)
JUDGE

August 03, 2023
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Whether speaking/reasoned	Yes
Whether Reportable :	No