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

CRM-M-37927-2023
Date of decision : 11.08.2023

JIVAN LAL AND ANR

....Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R.K. Dadwal, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Apprehending their arrest in FIR No.136 dated 15th of July, 2023, registered for offences punishable under Sections 406/420 of the Indian Penal Code, 1860 and Section 24 of Emigration Act, at Police Station Dasuya, District Hoshiarpur, the petitioners have preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

2. As per the allegations levelled in the FIR it has been alleged as under :

“Sir, I am Jashnpreet Singh son of Late Jasvir Singh from Village & Post office: Ghogra, Dasuya, District Hoshiarpur. Karan Kumar (Sally) and his father Jevan Lal both are working as agents and send men to the foreign countries. These two told me that your Greece Visa will be issued for 6,50,000/Rs. They took my passport on 18-05-2022 and got visa for Muscat, then on 22, May they put

my tourist visa for Serbia. Then they took us to the Serbia and agent's men took us to the hotel, where their guards took away my passport. Then their man made me cross the border of Greece illegally from Serbia boarder. I was beaten at the border and asked for money from home and Shelley and his father took Rs. 6,50,000/- from my home. We were caught in Palekastro and we were imprisoned and looted. We were deported to Turkey. Then thea Turkish army beat us and locked us (I and other boys) in the Tasla camp. Then two days later we were kept in Ankara camp Turkey for 2 months and 15 days. Then from there we were sent to a van camp in Turkey, then we were kept here for 1 month and 15 days and we were beaten for 2 hours at the border and deported to Iran. Our clothes were bloody, we were caught by thieves and we asked for 350 dollars from home and the thieves took it and left us in Tehran, Iran. Then we paid Rs. 48000/- in Iran and took us to Indian Embassy, they sent us to Iran Jail. Where we stayed there for 21 months and 10 days. Then they asked us for passport number from home. Then we asked for the number and got our ticket from Rs. 1,50,000/- and we came back to Delhi (India) on March 2, 2023. The said agents have cheated us and damaged our physical condition. I am very mentally disturbed. If I suffer any personal or financial loss, the said agent Karan Kumar (Shelley) and his father Jevan lal will be responsible. I took the village panchayat and wenta to the house of the said Shelli agent in Mirpur and Shelli and his father told that they will not return any of your money, please do what you want to so. Please take appropriate legal action against these two agents and their other agents, give me justice by returning my money and my passport number V7471214. xxx”

3. As per settled law petitioners are required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In **Gurbaksh Singh Sibbia vs. State of Punjab, 1980 (2) SCC 565**, 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....”

(emphasis supplied)

4. 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.”

5. As per settled law **(in C.B.I vs. Anil Sharma, 1997(7) SCC 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 belayed.

6. After going through the contents of the FIR and in view the

allegations levelled against the petitioners and their conduct, no ground to grant them pre-arrest bail is made out.

7. Consequently, the present petition is dismissed.

August 11, 2023		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No