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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-44138-2023

Date of decision : 02.11.2023

RAKSHA RANI

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aman Deep Saini, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, 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.31 dated 09.04.2021 (Annexure P-1) registered under Sections 420, 120-B IPC and Section 13 of Punjab Travel Professional Act, 2014 and Section 24 of Immigration Act at Police Station Division No.1, District Pathankot.

2. The brief allegations as per the FIR are that the complainant-Durgesh Joshi had paid a sum of Rs.4,05,100/- to the accused including the petitioner to procure a job for him and his brother in a foreign country. However, no such job was provided and the received money was not returned.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. In fact, the petitioner along with her mother was working in the Jalandhar Office of one person namely, Mark Christi who had his main office in Delhi. The

petitioner had been wrongly stated to be the wife of the said main accused Mark Christi. The petitioner had never approached the complainant for providing any Visa to the said complainant and only her bank account had been misused. As the petitioner was ready and willing to join investigation, she was entitled to the concession of anticipatory bail.

4. A status report dated 28.10.2023 by way of an affidavit of Sumeer Singh, PPS, Deputy Superintendent of Police, Sub-Division City, Pathankot has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. While referring to the said reply, she contends that when the complainant had gone to Jalandhar to the Office of the petitioner, he had met Mark Christi who had stated that the petitioner was his wife and that he (complainant) could accompany the petitioner to Ukraine Mark Christi had also given an account number of the petitioner to the complainant where the complainant had deposited money from time to time. Money had also been deposited into the account of the petitioner's mother namely, Sukhwinder Kaur. A sum of Rs.4,05,100/- had thus, been paid to the petitioner and her co-accused on the pretext of providing a job to the complainant abroad. The petitioner was also an accused in another case bearing FIR No.95 dated 23.11.2017 under Sections 420, 120-B IPC and Section 24 of Immigration Act, 1983, Police Station Banga, District SBS Nagar. She, therefore, contends that no case for the grant of anticipatory bail was made out and the 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 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. Coming back to the facts of the present case, a perusal of the FIR and the investigation conducted so far would clearly reveal that the petitioner along with her mother and the main accused Mark Christi who has called the petitioner his wife received a sum of Rs.4,05,100/- on the pretext of procuring a job for the complainant in a foreign country. However, no such job was provided. A perusal of the material on record would show that the money has been paid into the bank account of the petitioner and her mother. Therefore, the offence is *prima facie* established against the petitioner. Even otherwise, she is a habitual offender with one other case of a similar nature registered against her. As the offence is *prima facie* established and the investigation is to be taken to its logical conclusion, the custodial interrogation of the petitioner is certainly necessary.

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

9. However, the observations made hereinabove are only for the purposes of deciding this anticipatory bail petition 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.

(JASJIT SINGH BEDI)
JUDGE

02.11.2023
JITESH