

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

**CRM-M-53077-2022
Date of Decision: 18.01.2023**

Manish Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Edward George, Advocate for
Mr. Rishabh Gupta, Advocate
for the petitioner.

Mr. Vinay K.Gupta, AAG, Punjab
for the respondent/State.

HARSH BUNGER J. (ORAL)

The present petition under Section 438 Cr.P.C. has been filed for grant of anticipatory bail to the petitioner in case FIR No.31 dated 14.02.2019 (Annexure P-1), under Sections 406 & 420 IPC and Section 24 of the Immigration Act, registered at Police Station City Hoshiarpur, District Hoshiarpur.

On 21.11.2022, the following order was passed by this Court :-

“Prayer in this petition, filed under Section 438 of the Code of Criminal Procedure, 1973, is for grant of anticipatory bail to the petitioner, in case FIR No.0031 dated 14.02.2019, registered under Sections 406, 420 IPC and 24 of the Immigration Act, at Police Station City Hoshiarpur,

District Hoshiarpur.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case on the basis of statement of complainant-Anil Kumar for committing fraud on the pretext of taking a sum of Rs.6,00,000/- for sending him abroad. Learned counsel further submits that the allegation pertains to the year 2014-15 and the alleged amount too was also paid in that very period. . However, the FIR in question was registered after a delay of four years from the alleged occurrence. Learned counsel further submits that prior to the FIR in question, the complainant had moved an application bearing 1574-SSP dated 21.04.2017, in which the Deputy Superintendent of Police (Inquiry) had made the following report (Annexure P-3) :-

“The investigation of the complaint was conducted by Incharge, Economic Offence Wing, Hoshiarpur. During investigation, statements of both the parties were recorded. After perusing the statements and documents, it is found that the opposite party has given Cheque no.942805 dated 12.09.2016 which got bounced on the presentation. The complainant has filed case under Section 138 of Negotiable Instruments Act before the Hon’ble Court and as per the statement of opposite party, he has not given the said cheque to the complainant Anil Kumar and in this regard, he has also filed a case, the copy of which are attached herewith. Therefore, both the parties are advised that they should wait for the order of the court and shall be bound by the same.”

Accordingly, the complaint was filed. Learned counsel for the petitioner has referred to the cross examination of complainant-Anil Kumar in offence under Section 138 of the Negotiable Instruments Act, the relevant extract thereof reads as under :-

“There is no document on judicial file to show that I

withdrew Rs.6 lacs from any bank in July 2015. Vol. I am today in possession of my account statement of ICICI bank, showing the same. There is no document on judicial file to show that accused is in the work of travel agency.” xxx xxx I am income tax assessee. I cannot tell amount my gross income which is shown in the income tax return. I have not placed on record any income tax related documents. xxx xxx I filed present complaint in the year 2016. I had not filed any police complaint against Manish Kumar prior to filing of the present complaint. I moved an application to the SSP Hoshiarpur against Manish Kumar during the pendency of present complaint. No FIR was registered against Manish Kumar on my above said application volunteered the police official observe that matter is pending in the court my statement was recorded by the police officials only one time on the application moved by me.”

Learned counsel for the petitioner submits that the learned Additional District and Sessions Judge has wrongly rejected the bail application under Section 438 of Cr.P.C., moved by the petitioner vide order dated 17.02.2020. Learned counsel further submits that the petitioner is ready and willing to join investigation as and when required by the police.

Notice of motion.

On the asking of the Court, Mr. Subhash Godara, Additional Advocate General, Punjab, who is present in the Court, accepts notice on behalf of the respondent-State.

Learned counsel for the petitioner is directed to hand over a complete set of paper book of this case to learned State counsel during the course of the day.

List on 10.01.2023.

Till the next date of hearing, in the event of arrest of the petitioner, he shall be released on ad interim bail to the satisfaction of the Investigating/Arresting Officer. However,

he shall join the investigation as and when directed by the investigating agency and shall abide by the terms and conditions laid down under Section 438(2) Cr.P.C.”

Thereafter on 10.01.2023, it was submitted by learned State counsel that petitioner has not joined the investigation, which fact was denied by learned counsel for the petitioner and the following order was passed by this Court:-

“Learned State counsel states that the petitioner has not joined the investigation and the said fact is refuted by the learned counsel for the petitioner.

In view of the aforesaid submission, petitioner is directed to join the investigation on 12.01.2023 at 11:00 AM.

List on 18.01.2023.

Interim order to continue, till the next date of hearing.”

Learned counsel for the petitioner submits that pursuant to the aforesaid order, petitioner has joined the investigation.

Learned State counsel, on instructions from Assistant Sub Inspector Nanak Singh, has not disputed the aforesaid fact of joining the investigation by petitioner and submits that his custodial interrogation is not required at this stage.

Heard learned counsel for the parties.

Since the petitioner has joined the investigation and his custodial interrogation is not required at this stage, the present petition is allowed and *ad-interim* order dated 21.11.2022, passed by this Court, is made absolute.

However, the petitioner shall continue to join the investigation as and when required to do so and abide by all the conditions laid down under Section 438(2) Cr.P.C.

It is made clear that if the petitioner fails to comply with any of the directions issued above and the bail conditions, the State would be at liberty to move an application for cancellation of this anticipatory bail granted to the petitioner.

Present petition is accordingly disposed of.

18.01.2023
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No