

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

Neutral Citation No. 2023:PHHC:126854
CRM-M-55695-2022 (O&M)
Reserved on: September 25, 2023
Date of Decision: September 28, 2023

Sonu @ Akki Lahoria

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Manu Loona, Advocates for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

None for respondent No.2.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash impugned order dated 10.06.2022 (Annexure P-9) passed by learned Chief Judicial Magistrate, Fazilka, whereby petitioner has been summoned to face trial as an additional accused under Section 319 Cr.P.C. in a case arising out of FIR No.112 dated 30.09.2018 registered at Police Station City Fazilka, under Sections 420, 468, 471, 120-B IPC and Section 13 of the Punjab Prevention of Human Smuggling Act, 2012 and subsequent proceedings arising therefrom.

2. FIR in question was lodged on the complaint of one Karam Singh S/o Sukhdev Singh against petitioner Sonu @ Akki Lahoria, besides Jaspreet Kaur and Rajveer Singh, who committed cheating for an amount of ₹9,90,000/-. It was alleged that about 2 months ago, complainant came into contact with petitioner Sonu @ Akki Lahoria through Facebook and petitioner allured him to go abroad, saying that he had the office of M/s Gulf Job Group at New Delhi, who sent people to

Canada on work VISA. Complainant and his friends Mishra Ram and Ravinder Pal paid amount of ₹3,30,000/- each, out of which some of the amount was paid in cash to Jaspreet Kaur etc.; whereas the other amount was deposited in the bank account in the name of Jaspreet Kaur. Petitioner and his friends were asked to come to the office of the accused on 09.08.2018 to collect passport and tickets. However, when they reached there, the office was closed, though petitioner Sonu @ Akki Lahoria was present, who told that phones of the co-accused were switched off and they had fled away. They went to the house of abovesaid accused at Delhi, but the address was found to be fake. Complaint dated 09.09.2018 was made to the police, but no action was taken. Earlier on 19.08.2018, petitioner Sonu @ Akki Lahoria deposited 12 passports with Police Station City Fazilka telling that somebody had thrown them at his house. Those passports did not include the passport of Sonu @ Akki Lahoria, showing that he was conniving with the accused. With these allegations, FIR was lodged.

3. (i) Learned counsel contends that application for anticipatory bail of the petitioner was allowed by this Court, vide Annexures P-2 and P-3.

(ii) In fact, petitioner himself is victim of the crime, as he was duped by Jaspreet Kaur and Rajveer Singh, who had projected themselves as agents, assuring him to provide work permit and VISA for Canada. He came in contact with Rajveer Singh on Facebook, who had introduced himself as proprietor of M/s Gulf Job Group, New Delhi.

Jasveer Kaur was also introduced to him by Rajveer Singh. He came in

their trap and paid initially an amount of ₹50,000/- in advance and later on another amount, totaling ₹2,79,000/- and handed over his passport and VISA. He received a call from Rajveer Singh in 05.08.2018 to reach the office. On reaching there, he was shown the original passport having stamp of VISA for Canada and another amount of ₹20,000/- in cash was paid to said Jaspreet Kaur.

(iii) Being happy in excitement, he posted a post on Facebook regarding his sanctioning of VISA for Canada and complainant came in contact with him. Petitioner submits that he shared the number of co-accused with the complainant, who independently dealt with them without his knowledge and were cheated by the co-accused, with which petitioner has no concern. Petitioner and the complainant had visited the office of accused on 09.08.2018, but the same was found closed. They had made a complaint to the police. The matter was inquired into and he was found to be innocent. Learned counsel further submits that petitioner found 12 passports having been thrown by someone at this house, which he deposited with the Police Station City Fazilka, instead of returning them to the passport holders. He is neither the beneficiary nor any payment was made to him by the complainant and despite the fact that he was declared innocent, he has been summoned under Section 319 Cr.P.C. on the application moved by the complainant.

(iv) Learned counsel for the petitioner contends that the impugned order dated 10.06.2022 is not sustainable in the eye of law as there was not more than *prima facie* evidence against him as is required to invoke Section 319 Cr.P.C. Learned Trial Court has not considered the

fact that the petitioner has no connection or relation with co-accused Rajveer Singh and Jaspreet Kaur and that in fact the petitioner and the complainant are sailing in the same boat.

4. (i) Short reply by way of affidavit of Shri Shubeg Singh, Deputy Superintendent of Police, Sub Division, Fazilka reveals that on the basis of complaint made by Karam Singh, the matter was thoroughly inquired by the Deputy Superintendent of Police, Sub Division Fazilka and the allegations made in the complaint were found to be correct and then the FIR was registered against the petitioner, Jaspreet Kaur and Rajveer Singh @ Partap Singh. The challan was accordingly presented in the Court against Jaspreet Kaur and Rajveer Singh @ Partap Singh, who had been arrested. Present petitioner joined the investigation later on, but in the meantime, his mother Veena Rani moved an application pleading innocence of the petitioner. That application was inquired into by the Deputy Superintendent of Police (Detective), Fazilka, who found the petitioner to be innocent and so, supplementary challan in this regard was presented in the Court.

(ii) Ironically in the same reply, it is concluded by respondent-State that there are serious allegations against the petitioner and that there are no cogent or convincing grounds for quashing the impugned order passed by the Trial Court and so, present petition deserves to be dismissed.

5. I have considered submission of both the sides and have also perused the record carefully.

6. The issue regarding the scope and extent of power of the

Court to arraign any person as an accused during the course of inquiry or trial in exercise of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in “**Hardeep Singh v. State of Punjab**”, 2014 (1) R.C.R. (Criminal) 623 followed by another pronouncement in “**Babubhai Bhimabhai Bokhiria and Another v. State of Gujarat and others**”, 2014 (2) RCR (Criminal) (SC) 915.

7. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in **Hardeep Singh's case (cited supra)** in the following words:

"Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. it is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C."

8. After referring to aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in **Babubhai Bhimabhai Bokhiria's case (cited supra)** as under:

"Section 319 of the Code confers power on the trial court to find out

whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

9. The above said issue was also considered by the Hon'ble Supreme Court in Criminal Appeal No. 397 of 2022 (Arising out of SLP (Crl) Nos. 7373 of 2021) titled "**Sagar v. State of UP & Another**", Law finder Doc Id # 1955471, decided on 10.03.2022, wherein the Hon'ble Supreme Court referred to **Hardeep Singh's case (supra)** and held that crucial test, which has to be applied, is one which is more than a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.

10. In the light of aforesaid legal position, when the facts of this case are analysed, it is found that learned Trial Court in its impugned order dated 10.06.2022, has not committed any error in summoning the petitioner to face trial under Section 319 Cr.P.C. As per the contents of the FIR, it is the petitioner, who had introduced the complainant and his two friends with co-accused Rajveer Singh and Jaspreet Kaur. The said fact is even admitted by the petitioner in the present petition. It is the petitioner, who was found in possession of 12 passports, which he alleged to have been thrown by someone at his house. It is the petitioner, who

allured the complainant and his friends to contact co-accused for obtaining VISA for going to Canada and it is at his instance that money was paid by the complainant party to the accused. As far as the pleas taken by the petitioner to the effect that he himself is the victim as he had also paid an amount of ₹.3,00,000/- to the co-accused for obtaining VISA; and that being in excitement, he had posted a post on his Facebook account in this regard and due to that complainant came in his contact, petitioner will be at liberty to take all these pleas in his defence at the time of trial.

11. In the face of above circumstances, learned Trial Court has rightly observed in its impugned order dated 10.06.2022 that petitioner *prima facie* played pivotal role in the entire episode since beginning by first introducing the complainant with the accused Jaspreet Kaur and then to have been found in possession of passports of complainant and his friends and others. It has also been observed that the Investigating Officer declared the petitioner innocent without elaborating about the facts upon which he based these findings.

12. Thus, there is more than *prima facie* evidence against the petitioner and so, no fault can be found in the impugned order dated 10.06.2022 (Annexure P-9).

Finding no merits in the present petition, the same is hereby dismissed.

September 28, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No