

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

CRM-M-58439-2022

Date of Decision: 31.01.2023

BANTA RAM AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Jarnail Singh Saneta, Advocate
for the petitioners.

Mr. Amrik Narwal, D.A.G., Haryana.

HARSH BUNGER, J.

Petitioners have filed this petition under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail in case FIR No.523 dated 05.10.2022, registered under Sections 406, 420 of the Indian Penal Code and Sections 10 and 24 of the Immigration Act, at Police Station Thanesar City, District Kurukshetra, Haryana.

Brief facts of the case are that the afore-said FIR came to be registered on the statement of one Bachna Ram, wherein, he stated that the accused had taken Rs.5,25,000/- from him in the month of November, 2020 for sending his son-Vinod Kumar, abroad and also had taken all the necessary documents, whereas, the said persons had got the son of the petitioner trapped in the foreign country i.e. Dubai and when he asked for return of money, then they threatened. It is alleged that the afore-stated accused persons are neither returning the documents of his son nor they are

bringing him back to India. It is also alleged that the said accused persons have refused to return the amount to the complainant, rather, they are threatening the complainant with dire consequences to kill him and his son. It is still further alleged in the complaint that when the complainant asked to bring his son back, then the accused persons demanded Rs.2 lakhs more.

Learned counsel for the petitioners has submitted that the petitioners have been falsely implicated in the present case as they are neither the travel agents nor the persons, who procure the visas for others or help them to pass the IELTS exams. He further submitted that the allegations leveled in the FIR are totally vague as no date, month or year has been disclosed by the complainant when he had given the money to the petitioners and even the place has also not been disclosed where and in whose presence the money was handed over to the petitioners. It is submitted that nothing is to be recovered from the petitioners, still the bail application moved by them before the Court of Additional Sessions Judge, Kurukshetra, has been declined vide order dated 07.11.2022 (Annexure P-2).

Per contra, learned State counsel has opposed the prayer of the petitioners for grant of anticipatory bail by referring to para Nos.3 to 6 of the reply filed by way of an affidavit of Sh. Ram Dutt, HPS DSP, Kurukshetra, on behalf of respondent-State of Haryana, wherein, the following stand has been taken :-

“3. That the investigation of the present case is at initial stage and during investigation of the present case, it has come out that the complainant has transferred an amount of Rs.2,75,000/- from account of his son, namely, Vinod Kumar i.e. bank account no.50100261061695 of HDFC Bank BarheriKalan,

District Ambala on 18.11.2020 in the account of accused- Banta Ram out of Rs.5,25,000/- and remaining amount of Rs.2,50,000/- paid in cash to co-accused/petitioner no.2, namely Sonu by the complainant. The petitioner/accused no.2 has executed an affidavit in favour of the complainant in connection with the immigration transaction.

4. *That for the recovery of aforesaid amount and to unearth the nexus of such illegal travel agents, the custodial interrogation of the present petitioners/accused is required in the present case, hence petition of the present petitioners/accused is deserved to be dismissed.*

5. *That the notices were issued by the investigating agency to the present petitioners/accused but after receipt of notices issued by the police, the present petitioners/accused have not joined the investigation of the present case then police have moved application before the Court of learned Chief Judicial Magistrate, Kurukshetra for issuance of warrant of arrest against the present petitioners/accused and the Hon'ble Court has issued Warrant of arrest against the present petitioners/accused for 19.01.2023. The police have committed raid on the addresses of the present petitioners/accused persons so many times but they are absconding themselves and not joined the investigation of the present case.*

6. *That one more criminal bearing FIR No.545 dated 18.10.2022 under Sections 406, 420 IPC and Sections 10/24 of Immigration Act, Police Station City Thanesar, District Kurukshetra and in that case, the present petitioners/accused were not joined the investigation of that case, hence petition of the present petitioners/accused may kindly be dismissed."*

I have heard learned counsel for the parties and perused the paper book with their able assistance.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

In *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble the Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful information.

As regards the submission of learned counsel for the petitioners that no date, month or year has been mentioned by the complainant is concerned, it is the stand of prosecution that during investigation, it has been found that the complainant had transferred an amount of Rs.2,75,000/- from the account of his son namely, Vinod Kumar, into the account of petitioner No.1-Banta Ram and Rs.2,50,000/- was paid in cash to petitioner No.2-Sonu by the complainant and in this regard, petitioner No.2 had executed an affidavit in favour of the complainant with regard to the immigration transaction. The State is seeking custodial interrogation of the petitioners to unearth the nexus of the illegal travel agents.

In my considered view, custodial interrogation of the petitioners is very much required and necessary in this case for complete and effective investigation, so as to recover the aforesaid amount taken by the petitioners and also to unearth the racket of illegal travel agents, which is spreading its tentacles in the entire state as also the *modus operandi* of such activities alleged against the petitioners involving other persons. In

case custodial interrogation is denied to the investigating agency, that would leave many loose ends, gaps and lacuna in the investigation, thus adversely affecting the case.

Keeping in view the above facts and circumstances, the petitioners in the present case are not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioners in case FIR No.523 dated 05.10.2022, registered under Sections 406, 420 of the Indian Penal Code and Sections 10 and 24 of the Immigration Act, at Police Station Thanesar City, District Kurukshetra, Haryana; is hereby dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

January 31, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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