(212)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4176-2024
Date of decision :18.07.2024

GURMEET SINGH & ANOTHER

... Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Pankaj Garg, Advocate
for the petitioner.

Mr. Parveen Aggarwal, DAG, Haryana.

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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.272 dated 26.09.2023 (Annexure P-1) registered under Sections 406 and 420 IPC, 1860 at Police Station Sadar Ratia, District Fatehabad.

2. The present FIR came to be registered at the instance of Balwinder Singh and the same reads as under:-

> *"FIR No.272, dated 26.09.2023, Under sections 120-B, 406, & 420 of IPC, registered at Police Station Sadar Rattia, District -Fatehabad, (Haryana).*
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> *To- Sir, Superintendent of Police Fatehabad. Subject: Complaint regarding taking action against: 1. Sukhjit Singh son of Gurmeet Singh, Mob. 8295077716. 2. Gurmeet Singh son of Not Known, resident of Village Nangal, Tehsil Rattiya District Fatehabad Mob. 9813175766. 3. Maninder Singh (agent) resident of*

Kharar, Tehsil Karar, District Mohali Punjab Mobile No.8847326181 and 7508703749 4. Navneet Singh (Agent) resident of Chandigarh, Mobile No. 9770973039 regarding commission of offence of fraud by making false pretext to provide VISA and have misappropriated an amount of Rs. 31, 00,000/- (Rs. Thirty one Lacs). Sir, applicant is respectfully submitted as under: 1. That I applicant Balwinder Singh son of Mahinder Singh am permanent resident of village Chandokalan, Tehsil Rattia, Tehsil Ratiya, District Fatehabad. Applicant is having 08 acres of agriculture land in his name. The son of applicant Akashdeep Singh has passed 12th standard. On 19.12.2021, the applicant's son has cleared his PTE Examination, on the basis of which, applicant's son had applied for study-visa for Canada but on 25.11.2022, a rejection regarding visa of applicant's son was received. 2. Thereafter, on 30.11.2022 applicant's son met with co-accused no. 1 Sukhjeet Singh, who is classmate of his son, for visa of Canada and Sukhjeet Singh asked to his son to come to my house on the next day along with his father. 3. Thereafter, I/applicant along with his son went to house of accused no.1 Sukhjeet Singh in his village at Nangal Dhani and met him, where accused no.1 Sukhjeet Singh and accused no.2 Gurmeet Singh met them and they allured us and asked us to meet agents in Chandigarh for visa of Canada and accused persons above kept passport of applicant's son and told to them that they will talk further about the visa. 4. That on 04.12.2022, applicant and his son went to the disclosed residential address/house of accused no.3 Maninder Singh, an agent, at Kharar, Mohali, Punjab, *where accused no.4-Navneet Singh, an agent, was also present there and both accused persons Maninder Singh and accused Navneet Singh allured us for providing visa of Canada and demanded Rs.31,00,000/- for visa purpose, out of which Rs. 40,000/- were promised to be given in advance, upon which, applicant and his son became agreed. When he and his son asked accused person to deposit Rs.40,000/- in their accounts on very next day, then accused persons started looking at each other and co-accused no.3 Maninder Singh agent gave his account and asked them to get work visa within 15-20 days and further told to keep remaining amount ready. 5. That on 05.12.2022, Rs. 40,000/- were transferred in the bank account of co-accused no.3 Maninder Singh as NEFT, through his (complainant's) bank account No. 00461000020365 with Punjab & Sind Bank Branch Ratia. Thereafter, accused no.1&2 assured to the applicant that they will get his work visa done soon, upon which on 26.12.2022, accused no.1&2 Sukhjeet Singh and Gurmeet Singh, informed them telephonically that their visa has been approved and accused persons asked them to come to Embassy at Delhi along with payment of Rs. 15,00,000/-, upon which applicant and his son went there along with payment of Rs. 15,00,000/-in cash, where all the accused persons found present, who showed them a visa on the passport and further asked them to hand over packet of currency notes and accordingly, applicant and his son handed over Rs.15,00,000/- to accused persons and accused persons further asked them to prepare for remaining amount and their ticket* *to Canada will be booked soon. 6. That on 27.01.2023, 03.02.2023, 08.02.2023, 18.03.2023 and they (applicant) paid a sum of Rs. 5,00,000/-, Rs. 3,00,000/- Rs. 2,00,000/-,Rs.1,00,000/-,respectively in the account of accused no.3 Maninder Singh, and on 27.03.2023 applicant further transferred an amount of Rs. 100.000/- in the account of accused no. 1 Sukhjit Singh through RTGS. In this manner applicant had given total an amount of Rs. 27,40,000/-to accused above. The accused persons assured that the ticket of applicant's son Akashdeep for Canada would be booked till 05.04.2023 and accused persons further asked them to prepare for remaining amount of Rs.3,60,000/-.7. Thereafter, accused no.1 & 2 Sukhjeet Singh and Gurmeet Singh told to him that they have booked the ticket of Akashdeep for Canada on 05.04.2023 and he should give remaining amount of Rs. 3,60,000/-, upon which applicant had paid remaining amount of Rs. 3,60,000/- to accused no.1 & 2 Sukhjeet Singh and Gurmeet Singh in their house at village Nangal Dhani. 8. Thereafter, on 04.04.2023, accused no.3 Maninder Singh made a telephonic call and informed him/applicant that the ticket of his son for Canada has been cancelled and they would book his ticket again soon. 9. Thereafter, on 09.05.2023, all the accused persons called to the applicant and his son at Delhi and told that ticket of Akashdeep has been booked and they would send him to Canada in 1-2 days and he/applicant and his son were kept in Haveli Hotel, Paharganj for 03 days but accused persons did not give any satisfactory reply, upon which he/applicant and his son returned back to their house on 12.05.2023. 10.*

> *Thereafter, applicant and his son went to the house of accused no.1&2 Sukhjeet Singh and Gurmeet Singh in their house situated at village Nangal Dhani and asked them that they have cheated them in the pretext of sending abroad Canada and upon hearing this, accused persons got an enraged and told that they have committed fraud with you, you can do whatsoever you want. Thereafter, when applicant made telephonic call to accused no. 3 & 4 but accused persons procrastinated the matter on one pretext or other and told them that they would book ticket of his son for Canada within few days, but till date neither accused persons have booked ticket of his son for Canada nor they have returned his amount of Rs. 31,00,000/-. They have neither given any satisfactory reply regarding cancellation of ticket. 11. Thereafter when applicant enquired about visa, then it was found a fake document. Due to which the applicant and his son have suffered mental harassment. So it is requested to you kindly to take legal action against assailants above regarding commission of offence of cheating in the pretext of sending applicant's son an abroad and misappropriated an amount of Rs. 31 lacs as well as his passport and issued a fake Visa/Ticket to the applicant's son and necessary stern legal action be taken against them. Sd/- Balwinder Singh, applicant Balwinder Singh son of Mahinder Singh, Resident of Village Chando Kalan, Tehsil Rattia, District Fatehabad. Mobile No 9728904105."*

3. The learned counsel for the petitioners contends that the petitioners have been falsely implicated in the present case. In fact, the

petitioners themselves were victims and had paid a huge amount of money to the co-accused Maninder Singh and Navreet Singh. The audio and video recordings would bear testimony to the said fact. The co-accused had asked the petitioners to get conducted their medical test to travel abroad as was apparent from Annexure P-9. It was the co-accused who had booked the ticket of the petitioners and later cancelled the same. Therefore, the case of the petitioners could not be equated of that of Maninder Singh and Navreet Singh whose bail applications had been dismissed. As the petitioners were ready and willing to join investigation, they were entitled to the concession of anticipatory bail.

4. On the other hand, the learned State counsel while referring to the reply dated 09.07.2024 contends that there were specific allegations levelled against the petitioners for playing the role of conduits between the complainant party on the one hand and Maninder Singh and Navreet Singh on the other. A huge amount of money had been paid to the petitioners partly in cash and partly through banking transactions. Merely because the petitioners had also paid money to the travel agents Maninder Singh and Navreet Singh who sent them abroad did not in any manner suggest that they had not cheated the present complainant party. As the offence was *prima facie* established against the petitioners, they were not entitled to the concession of anticipatory bail.

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.*
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> *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.*
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> *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. A perusal of the FIR would reveal that it was the petitioners who allured the complainant party to meet the travel agents at Chandigarh. The petitioners along with Maninder Singh and Navreet Singh received a sum of Rs.15 lakhs when the forged VISA was handed over to the complainant party. A sum of Rs.1 lakh was deposited by way of RTGS in the account of Sukhjeet Singh (petitioner No.2). Later, a sum of Rs.3.5 Lakhs was also paid to the petitioners. Merely because the petitioners also paid money to the co-accused Maninder Singh and

Navreet Singh does not in any manner suggest that they had been falsely implicated at the instance of the complainant party. At best it could be said that the petitioners themselves were desirous of travelling abroad. Therefore, as the offence is *prima facie* established and the custodial interrogation of the petitioners is necessary to take the investigation to its logical conclusion, the petitioners are not entitled the concession of anticipatory bail.

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 bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

18.07.2024
JITESH

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