CRM-M-21527-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-21527-2024
Decided on: 17.05.2024

Atma Singh ...Petitioner

Versus

State of Punjab …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr.Ankit Rana, Advocate for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
65	30.03.2024	Model Town, District Hoshiarpur	406, 420 IPC and Section 24 of Immigration Act

1. The petitioner apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. Vide a detailed order dated 01.05.2024, State was asked to file reply and this Court had granted interim bail to the petitioner.

3. Petitioner's counsel argued that petitioner is not working as a travel agent from the year 2016 onwards and the complainant is his nephew and has made false allegations because of enmity and grudge. His next argument is that allegations pertain to 27.07.2021 whereas, FIR was registered now and the delay is not explained. He further submits that he has joined the investigation and complied with the order dated 01.05.2024.

3(a) Petitioner's counsel further argued that petitioner has falsely and wrongly been implicated in the abovementioned FIR and petitioner is 73 years old and he is suffering from various ailments. He further submits that complainant himself admitted in the FIR that the petitioner is my real uncle/Taya (elder brother of my father), due to the old grudge, they involved the petitioner in the false criminal case. It is further submitted that all the allegations are false and fabricated one and the amount shown by the complainant as having withdrawn from his account was neither given to the petitioner nor deposited in the account of the petitioner nor in the name of firm. It is further submitted that the payment which is alleged by the complainant to be given to the petitioner in the Year 2021 was never paid and now in the Year 2024 they are claiming their amount by lodging the FIR after a delay of 3 years. As such, it is totally a false and fabricated case which is planted by the complainant upon the petitioner due to the old grudges. At page 11 of the FIR at para 5, complainant himself stated that he along with the petitioner went to Punjab National Bank and withdrew the amount and thereafter they went to the house of the petitioner and give Rs.9 lacs in their house. Regarding this, no specific date is mentioned in the FIR that when they withdrew the amount and neither the time is mentioned when they gave the amount and nor any CCTV footage of the bank is there to show that petitioner is with the complainant. Petitioner's further contention is that petitioner is old age person and his wife has died in the year 2017 and thereafter the petitioner is not working as travel agent and the petitioner is suffering from various ailments. Counsel further submits that custodial interrogation and pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. Counsel for the State opposes the bail and seeks custodial interrogation to recover the amount.

5. Prosecution's case is being taken from reply dated 10.05.2024, which reads as under:-

> *"….the complainant Jagjit Singh submitted an application bearing No.8529-PD dated 20.09.2023 against the petitioner, Lovedeep Singh and Rajdeep Singh sons of the petitioner for committing fraud of Rs.11,50,000/- on the pretext of sending to Portugal. The complainant stated in his aforesaid complaint that the complainant intends to go abroad. Atma Singh his real uncle and his sons namely Lovedeep Singh and Rajdeep Singh are doing the work of travel agent and they have also opened their office. The complainant discussed with them about going abroad and they assured him to send him abroad within one month. Thereafter complainant alongwith his father again met them and they assured them that they will send him to Portugal within short period and demanded an amount of Rs. 11,50,000/- from him. On 22.5.2021, he*

handed over an amount of Rs.2,50,000/- and passport to them at their house. Thereafter, the accused persons said that the visa is coming, they HD would pay the remaining amount of Rs.9 lacs soon. Then the complainant alongwith three others persons went to Punjab National Bank Branch Hoshiarpur and withdrew an amount of Rs.9 lacs from the account of his father and thereafter they went to the house of the accused persons where the complainant party handed over an amount of Rs.9 lacs to them. On 10.12.2021, the complainant party approached the accused persons and inquired about the visa of the complainant, but they replied " if you have to hurry, then take your passport" back and they threw the passport in front of the complainant party and also told that they will return their money within two months. In the month of July 2023, the accused persons refused to return the money of the complainant party. Action be taken.

3. That it is submitted that the aforesaid application was marked for inquiry to DSP PBI/NDPS Hoshiarpur and he conducted inquiry into the matter in detail and found that the petitioner had his office in the name and style of Rajdeep Enterprises at Adda Mahilpur, District Hoshiarpur and he received Rs.9,00,000/- in cash from the complainant on 27.07.2021 to send him to Portugal. The petitioner neither sent the complainant Jagjit Singh to Portugal nor returned his money. Lovdeep and Rajdeep sons of the petitioner were not found to have any role for committing the said fraud with complainant. Therefore, the Deputy Superintendent of Police, PBI NDPS Hoshiarpur recommended to register a case U/s 420, 406 IPC and 24 of Emigration Act 1983 and sent the inquiry to SSP, Hoshiarpur for further action. On this, SSP, Hoshiarpur sent the said inquiry report alongwith papers to SP PBI OC and Narcotics Hoshiarpur to give comments. On this, the SP PBI OC and Narcotics Hoshiarpur conducted inquiry into the matter and agreed with the finding given by the DSP PBI NDPS Hoshiarpur and sent the inquiry report to SSP, Hoshiarpur for further action. On this, the SSP, Hoshiarpur considered the inquiry report of SP PBI OC and Narcotics Hoshiarpur and approved the same and directed the SHO, P.S. Model Town, Hoshiarpur to register a case and to investigate the case. Accordingly, FIR No. 65 of 30.03.2024, Under Sections: 406,420 of IPC and Section 24 of Immigration Act was registered at Police Station: Model Town, Hoshiarpur.

4. That it is submitted that during the investigation, the petitioner was granted interim bail by this Hon'ble Court vide order dated 01.05.2024, accordingly the petitioner joined investigation in the present case on 04.05.2024 and he was released on furnishing bail bonds as per direction of this Hon'ble Court.

5. That it is submitted that the police of P.S. Model Town, Hoshiarpur are conducting investigation in the present case. After completion of investigation, the final report of the present FIR will be presented in the Ld. Trial Court at Hoshiarpur.

ROLE OF THE PETITIONER

That it is submitted that the petitioner is travel agent and had his office in the name and style of "Rajdeep Enterprise" at Adda Mahilpur and he received Rs.9,00,000/- on 27.07.2021 in cash from the complainant to send him Portugal. But the petitioner neither sent the complainant to

Portugal nor returned his money and he was found to have committed fraud of Rs.9,00,000/- with the complainant on the pretext of sending him to the Portugal in the inquiries conducted by the DSP PBI NDPS Hoshiarpur and SP PBI OC and Narcotics, Hoshiarpur."

6. I have heard counsel for the parties and gone through the petition. An analysis of the pleadings and arguments would lead to the following outcome.

7. Complainant has leveled general allegations against the petitioner-Atma Singh, who is his real uncle referring him to be as Taya, elder brother of his father and accused No.2 & 3 were cousins i.e. sons of petitioner. He stated that they had agreed to send him to Portugal for Rs.14 lacs but gave him a discount and agreed for Rs.11,50,000/-. Out of the said amount on 22.05.2021, complainant gave them Rs.2,50,000/- and after that Rs.9 lacs by withdrawing the same from bank. On 10.12.2021, they returned complainant's passport and said that they will return the money, which they have not returned, which lead to the registration of FIR. The complainant further submits that in July 2023, they flatly refused to return the money and therefore they approached the police.

8. Petitioner is real Taya of the complainant and if relations were cordial, it is doubtful that Taya took such heavy amount from his own nephew and if the relations were not cordial then there was no reason for nephew to believe them and take his service. All this depends upon person to person and there would not be any general rule but there is massive delay in lodging the complaint of initial amount of Rs.2,50,000/- which was paid on 22.05.2021 and Rs.9 lacs on 22.05.2021 but the complainant kept quiet for three years. In addition to that main ground for this Court to grant bail is that specific statement by the petitioner that he had stopped doing the travel agent business in the year 2016. State counsel cannot refute such contention. Perusal of the reply is also silent that the petitioner currently aged 73 years, whether he is working as travel agent or not. Petitioner's age is a factor which somewhat corroborate his stand that he is not now working as travel agent.

9. In the entirety of facts and circumstances of the case and the fact that petitioner has joined the investigation and complied with the order dated 01.05.2024, petitioner makes out a case for anticipatory bail and it is neither a case of custodial investigation

nor pre-trial incarceration. It is clarified that this order shall not be cited as precedents for bail by the other co-accused.

10. Given above, petition is allowed and interim order dated 01.05.2024 is made absolute. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

17.05.2024
anju rani
Whether speaking/reasoned: Yes
Whether reportable: No.