2024:PHHC:121234

101+206 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-23101-2024 (O&M)
DECIDED ON: 31.07.2024

BHUSHAN KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sukhdeep Singh Bhinder, Advocate for
Ms. Indira and Mr. K.M. Garg, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

Mr. Ishan Thakur, Advocate for
Mr. L.S. Sidhu, Advocate
for the complainant.

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SANDEEP MOUDGIL, J

CRM-30320-2024

Prayer in the present application is for placing on record report of Senior Superintendent of Police, Mansa as Annexure P-4.

Application is allowed, as prayed for.

CRM-M-23101-2024

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in FIR No. 57, dated 22.04.2024, under Section 420 of the Indian Penal Code, 1860 (for short 'IPC') registered at Police Station City-1, Mansa.

2. The prosecution story as narrated in the FIR reads as under:-

> *"Copy of complaint No.166-1-364/PM dated 04.03.2024, "To the SSP Mansa. Subject: Complaint against Bhushan Kumar (98156-50610) and his wife Manju Bala for committing fraud and cheating on the pretext of job and by giving fake cheque. Sir, it is respectfully submitted that on 31.12.2019, Bhushan Kumar of Mansa, who runs a shop at Dr. Pawan Bansal's clinic in the name of BK Medicos on Water Works Road, I got his phone call at around 6:30 in the morning and said that he will get my wife who is MA, B.Ed. a job. But I ignored it and went to my shop, which was opposite to his shop. Then he came to my shop and said that he has setting with senior Congress leader Bharat Inder Singh Chahal. We have to deposit Rs.10 lakhs as party funds and he will appoint my wife in Excise Department. I did not believe on his words, then in the evening, he brought his wife Manju Bala to my shop to ask his wife, as she was also appointed in the same manner, even though her numbers were very low. His wife Manu Bala assured me that this work would be done easily. At this, I apprised said facts to my family for taking opinion. After talking, I told Bhushan Kumar that my wife Santosh Rani is overage, she cannot get a job as per the government rules. At this, Bhushan Kumar told me that he will prepare a certificate, whereby she will get exemption of 8- 10 years in age and it will be his responsibility. Thereafter, I gave him my consent. On January 3rd, 2020, I gave him Rs.2.50 lakh through bank and Rs.90,000/-, which was available with me at that time. Thereafter, on 22nd March 2020, I brought Rs.1 lakh from the house of my friend Jeevan Kumar, who was ill at that time and I gave Rs.50,000/- at the shop on the same day, where he himself was present. Then he and his wife came to my house but I was not at home at that time. My son and my wife were present at home. My wife after talking to me on phone, gave them Rs.1.50 lakh in cash. After making them payment of Rs.6.40 lakh, I was repeatedly asking them to introduce me to Bharat Inder Singh Chahal, so that I could be convinced. Then he took me with him to go to Patiala, on the way, he made an excuse that he talked on phone and Bharat Inder*

Singh Chahal is out of Punjab and then he brought me back. Thereafter, for a long time, he kept playing with me by making excuses. On 04.12.2020, he told me that our work is done and asked me to pay money with two photos of my wife alongwith her Aadhaar card, educational qualification certificates. At that time, I had only Rs.1 lakh, which I gave it to the employee Bunty working in his shop and talked to Bhushan Kumar, whose call recording is with me. But in the name of getting the work done, he kept making excuses. Then he started saying that first to pay the remaining money and then our work will be done. The shop which I was running, same was sold, due to which, I had Rs.2 lakh in cash of the shop. On 31.12.2020, I and my friend Naresh Kumar son of Om Prakash went to his shop and gave him said money and thus, total amount came to Rs.9.40 lakhs. I showed my inability to pay the remaining amount. At his, he replied, do not need to worry, as the remaining amount of Rs.60,000/- will be given arter getting service. But he continued to make excuses in the same way. My wife and I used to visit his house again and again and his wife used to say that he has gone to Chandigarh to get our orders and sometimes, used to make different excuses. Thereafter, we started demanding our money. When we went to his house to ask for money, some relatives had come to his house. He thought that he would feel disrespect in the presence of relatives, so he came out and talked about giving me cheque of the same amount and at the same time, he said that he will give me the possession of his shop and his shop will be vacated when those cheques are encashed. He gave me one cheque of Rs.3,40,000/- bearing No.587592 and another cheque of Rs.3,00,000/- bearing No.587679 and one another cheque of Rs.1,00,000/- bearing No.587637 and told me to give the remaining Rs.2 lakhs in cash and also gave me the keys of the shop in which my laptop, fridge, two counters, two chairs and other belongings are present and said that either he will give me the total amount in cash or get the registry of shop executed. Till now, I have the possession of the same. I am apprehending that he may break the locks affixed on the shop at any point of time and if such act done, only Bhushan Kumar will be responsible for the same. When I went to *the bank for the clearance of said cheques, I came to know from the bank that Bhushan Kumar gave me the cheques of the bank, which has already merged with another bank and cheque books of that bank have been exhausted. The bank has also given a written note in this regard, which I am presenting to you. It is clear from above that he has been dishonest with us even in issuing the cheque. In this regard, I had given written complaints to senior officials and during enquiry, Bhushan Kumar assured me that if I withdraw the complaint, he will return my money. I trusted him and got the complaints consigned to record room. But now, he is neither executing registry of said the shop nor refunding my money back. He is threatening to kill me on asking for money and he is also threatening with his two officials. Bhushan Kumar and his wife Manju Bala will be responsible if any loss of life and property caused to me or any of my family members. Therefore, kindly register an FIR against Bhushan Kumar and his wife Manju Bala for committing cheating by pretending to get a job and committing fraud by giving fake cheque and justice be delivered to us."*

3. It has been contended by learned counsel for the petitioner that the petitioner has been falsely implicated in the present case whereas, the dispute is with regard to the money transaction between the petitioner and complainant. The assertion is that no offence under Section 420 IPC has been made out against the petitioner as there is no allegation that the petitioner was, in any manner, involved in an act of instigating, inducing or alluring the complainant or any other person to give money. Moreover, the wife of the complainant was ineligible being over age and it is impossible that a person who is over age could get a government job. Earlier also the complainant moved a similar complaint on the same set of allegations wherein, an inquiry was got conducted by the Deputy Superintendent of Police, Mansa and during inquiry it was found that there is dispute regarding money transactions between the petitioner and the complainant, hence, no action was taken.

4. Learned State counsel assisted by counsel for the complainant has opposed the prayer made in the present petition stating that there is sufficient evidence against the petitioner to prove his guilt. There is specific allegation against the petitioner that he has defrauded the complainant to the tune of Rs.9,40,000/- on the pretext of getting job to his wife in a government department. The investigation of the present case is at initial stage.

5. Heard learned counsel for the parties.

6. No other argument has been raised by either of the parties.

7. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The court has extraordinary power to protect an innocent person. However, this power has to be exercised by the courts with due circumspection.

8. In the present case, the petitioner was granted interim bail vide order dated 09.05.2024 in the light of the fact that parties are ready to settle the dispute amicably. Thus, they were directed to appear before the Mediation and Conciliation Centre of this Court on 15.05.2024 at 10.00 AM and report of the Mediator was called for 27.05.2024. As per report despite best efforts, the parties could not arrive at any amicable settlement.

9. A perusal of the FIR reveals that the petitioner lured the complainant to part with a huge amount of money running into lakhs on the pretext of getting government job to the wife of the complainant. The petitioner also issued two cheques, one for a sum of Rs.3,00,000/- and another for Rs.3,40,000/- i.e. the total of the amount paid by the complainant to the petitioner, which is sufficient for this

Court to infer that the petitioner has defrauded the complainant. Hence, *prima-facie* offence under Section 420 IPC is made out against the petitioner.

10. It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in ***"State vs. Anil Sharma"; (1997) 7 SCC 187***, held as under:-

> *"We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."*

11. Keeping in view the role attributed to the petitioner, this Court is of the view that their custodial interrogation is required to collect the material evidence, which may further enable the Investigating Agency to unearth the ramifications involved in the present case and that will ultimately help the Investigating Agency to reach to a logical conclusion.

12. In view of the discussions made hereinabove, this Court is of the firm view that the petitioner does not deserve the concession of pre-arrest bail, as such the same is dismissed being devoid of any merits.

(SANDEEP MOUDGIL)
31.07.2024 **JUDGE**
Sham

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*