

2024:PHHC:080422



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

**CRM-M-23444-2024
DECIDED ON: 10.05.2024**

SATISH KUMAR
.....PETITIONER

VERSUS

STATE OF HARYANA
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.K. Tuteja, Advocate
 for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in FIR 397, dated 17.05.2022, under Sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code 1860, registered at Police Station Assandh, Karnal.
2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and in fact on the bare perusal of the FIR, no offence under Sections 406, 420, 467, 468, 471 and 120-B IPC is being made out as not even a single penny was every demanded or handed over to the petitioner. The allegations are against the accused Kulwant Singh @ Raja, who had assured the complainant to send him abroad and out of total consideration of Rs.32.00 Lacs, an amount of Rs.9.00 lacs were allegedly paid to him.
3. Notice of motion.

4. Mr. B.S. Virk, Sr. DAG, Haryana, appearing on advance notice, has accepted the same on behalf of respondent-State. He opposes the prayer made in the present petition stating that the petitioner has actively participated in the commissioning of the offence. The role of the petitioner, which has surfaced during the course of investigation is that the money was paid by the complainant in the premises of the petitioner.

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. More so, investigation is still going on in the present case. 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.”

9. After examining the case file, it is evident that the petitioner has given a cheque for the amount paid by the complainant, which points out to his role in the transaction.
10. Keeping in view the role attributed to the petitioner as well as nature of averments, this Court is of the view that his 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.
11. 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.

10.05.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No