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2024:PHHC:151668

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29965-2024
DECIDED ON: 20.11.2024

ISHAN SHARMA AND ANR

.....PETITIONERS

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Johal, Advocate
for the petitioners.

Mr. Jaspal Singh Guru, AAG, Punjab.

Mr. Rajiv Joshi, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioners in FIR No.11, dated 31.03.2024, under Sections 420, 120-B IPC (Sections 465 and 468 IPC added later on) and Section 13 of Punjab Travel Professionals (Regulation) Act, 2014, registered at Police Station PS NRI, District Hoshiarpur.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

> *"Complaint UID No 2373049 dated 17-06-2022 was given by Anuradha Sharma wife of Vipan Kumar resident of Village Ahiyapur Urmur, Police Station Tanda, District Hoshiarpur current redident of Italy, in the office of*

ADGP/NRI Wing Mohali. The contents of which are as follows, "Madam, I am Anuradha Sharma wife of Vipan Kumar resident of Via Luigi Zelioli 42 Vescovato Cremona Italy. My two sons were studying in India whose name are Himanshu Kumar and Abhishek Kumar and they have complete their studies since 2020. There was one known friend of me who was resident of Patiala which introduced me Ishan Sharma son of Ramanjit Sharma resident at MIG 553 Phase 1 Urban State Patiala and proprietor of Star Overseas located at S.C.O first floor SURYA Complex Patiala whose mobile number is + 919988416051. After I meet him at his office I gave him passport copies of both of my sons and then he told me about Canada study visa procedure of Concordia University and McGill University located at Montreal province Qubec Canada. Then he told me that how to pay University tuition fee, GIC, flight ticket, Visa fee, biometric fee, food and accommodation fee. Next day he sent me a bank detail of Madam Sonia to transfer payment and then I called him that who is Madam Sonia and then he replied to me that she is my wife and she is managing Chandigarh branch whose mobile number is 9915462031 resident of House no 138 Katchatoba Hoshiarpur. Then I asked to him that why you do not transfer payment directly to Canada University then he replied to me that it is my responsibility about your payment and to send your sons abroad. Then I from Punjab Sind Bank Bullowal Hoshiarpur done NEFT to madam Sonia Account number 0575000100340591 bank name Punjab National Bank branch Chandigarh different amounts which in total were 14,07,632/- Rupees. He told to me that your sons September intake is ready and offer letter and registration number I will send you when arrives. Then he told to me that I have to deposit GIC of *both your sons and I am depositing from my side and I asked how much fee you are depositing he 'replied 21,000/- Canadian Dollars which is equivalent to 12,60,000/- Indian Rupees and replied to me that don't do NEFT I will come to Tanda and take cash from you by hand but I said to him I cannot give you total amount but I will give you small amounts in different times. I have given him 10,50,000/- amount in different times and he told me that your sons fee is paid and GIC is also paid to bank. After sometime he called me and said that Abhishek Kumar and Himanshu Kumar whose files are submitted in Northern College and Oshawa College in Toronto do not accepted them because they have not done IELTS and for Abhishek Kumar there is not one year course and he then shifted file from Northern College to McGill University of Abhishek Kumar and from Oshawa College to Concordia University of Himanshu Kumar also said to me that now tuition fee is paid for 2 years of Abhishek Kumar. He then said to me Abhishek Kumar fee will take time to refund in order to interrupt time give me 14,27,000/- Indian Rupees so that his file will be in process and he can go in January 2021 Intake and I will give back you payment when it wil be refunded from both colleges in Toronto respectively. I then gave him payment 14,27,000/- in two installments in which one payment was of 5,00,000/- and another was 9,27,000/-when he had come to Tanda with Madam Sonia at my home. He then took payment and I said to him that please do early as possible in January 2021 intake but he replied to me that due to Covid 19 Canada study visa process is slower and I will try my best to send your sons in January 2021 intake. Then I went to his office in December 2020 last week he was attending his clients about Portugal Work permit visa and he told to me that there is a good offer* *for you regarding Portugal work permit in which I took 9,00,000 from people but from you 6,00,000 in which half of the payment I will take before visa and rest after visa. Next day I called my relatives at home I suggested him about Portugal work permit offer in which they agreed and then I have sent him passport copy. After few days he sent me Ashish Kumar joining letter of Motaengil firm in Lisbon Portugal and told to me that to submit payment. After that I and Ashish Kumar deposited 2,05,400 in which some was NEFT and cash deposit in his Punjab National Bank Patiala and rest of payment he took cash from my me at my house. Total amount paid to him by cash or NEFT is as follows: 1. 14,07,632 Madam Sonia Account transfer 2. 10,50,000 Cash payment 3. 14,27,000 University fee and GIC 38,84,632 Total amount Out of 38,84,632 26,02,200 University tuition fee and GIC both. Balance amount 1262632 work permit Portugal fee, air ticket, bond, Visa fee and biometric fee. He said to me that January intake is full due to Covid 19 and your sons will go in March 2021 intake. After May intake 2021 date had come he has not responded with good answer. Other children in my friend circle had gone in May 2021 intake then I enquired about documents to other agents they said to me he has done fraud with you and you ask from him offer letter, registration DI and deposit copy. If he has given to you it is right but if he has not given to you then he has done fraud with you. I said to him many times that give me copies but he answer me with excuse. Then I realized that he had done fraud with me he and his Star Overseas firm is fake and not registered then said to me that I will give you all your payment slowly in instalments. He given me 4 checks with date written of December and January whose total amount was 15,83,000. Later his all four checks went bounced and his* *bank account status is not sufficient funds. I then according to him submit checks thrice and thrice went bounced and status is showed non-sufficient funds. From 38,84,632 3,28,000 in different times he deposit in my bank account and balance amount 3156632 is still pending to be paid. He has used 2 years our payment and reply with a answer that I had already gone in jail. He has done fraud to me since I trust him. Please give me justice so that he can return my payment and punishment should given to him what he has done and I have come with my family to Italy just because of him. Yours Sincerely Anuradha Sharma Whatsapp +919478568197 Italy Mobile Number +393454576595 India address VPO Ahiyapur Urmar Tanda Punjab. The investigation of the above complaint was got conducted by the Chief Police Station through A.S.I. Sukhwant Singh, who has written in his recommendation in his inquiry report, that from the investigation of the above complaint till date, statements of witnesses and from the perusal of the related documents obtained, that the answering party Ishan Sharma by colluding along with his accomplice Sonia, has defrauded the complainant party by obtaining Rs. 29,90,637/- in lieu of sending both the sons of the complainant to Canada. Apart from this the complainant Anuradha Sharma, in her application, has levelled allegations against Ramanjeet Sharma resident of House No. 553 Phase-1 Urban Estate Police Station Urban Estate Patiala District Patiala regarding committing fraud in the name of sending abroad. During the investigation, the charges against him have not been proved and neither has the complainant been able to present any solid evidence against him. Therefore, if approved, then after obtaining opinion from the legal advisor, recommendation for registration of FIR under* *sections 420, 120-B IPC and section 13 Punjab Punjab Professional Travel Agents Act 2014, at Police Station NRI District Hoshiarpur against the answering party Ishan Sharma son of Ramanjit Sharma resident of House Number 553, Phase-1, Urban Estate, Police station Urban Estate, Patiala, District Patiala and Sonia daughter of Arun Kumar, resident of Arun Kumar, resident of house no. 52, New Mahindra Colony, Near Bhagat Singh Chown, Patiala, District Patiala. After registration of the case, during the investigation, the questioned signatures of Jessica Mehta on the RTGS of Rs. 05 lakhs dated 01-02- 2022 presented by the complainant party, will be compared with the admitted signatures and sample signatures of Jessica Mehta by the Hand Writing Expert FSL, and action will be taken as per the report received. During the investigation if any other concrete fact/proof or the collusion of any other person comes forward, then it will be deliberated upon during the investigation. The report is available for order. Sd/- Amit Sandhu I. Chief Officer, police station NRI, District Hoshiarpur. Dated 19/11/2023. Concurring with the said report, Assistant Inspector General of Police NRI. Wing Jalandhar sent the report on 19 03-2024 in the service of ADGP/NRI WING SAS NAGAR, on which Hon'ble ADGP/ NRI Sahib wrote to get the opinion of the 3 constituted committee, on which the constituted committee has written in its report that "On reading the investigation report of AIG NRI Jalandhar dated 26-03-2024, it has been found that the complainant Anuradha Sharman for sending her two sons to Canada on study visa had had talks with agents answering party Ishan Sharma son of Ramanjit Sharma and Sonia daughter of Arun Kumar of Patiala. The answering party Ishan Sharma and Sonia have in collusion (without having any*

> *license for being an agent, by obtaining a sum of Rs. 29 lakhs 90 thousand 637 rupees from the complainant party and by not sending her sons abroad have committed cheating. From which prima facie the offence under section 420,120-B IPC and section 13 of the Punjab Professional Travel Agent Act, 2014 has been found to have been committed. So it recommended that FIR under section 420,120-B IPC and section 13 of the Punjab Professional Travel Agent Act, 2014 be registered against Ishan Sharma son of Ramanjit Sharma and Sonia daughter of Arun Kumar resident of Patiala and investigation be conducted. The allegation of preparing forged IELTS certificate by the complainant against the answering party, should be considered during the investigation. However, the decision taken by you would be final and binding. (PS NRI HPR) Sd/-ASI/LR Sarabjit Singh, No. 375/FGS, Non Resident Indian Affairs Wing, SAS Nagar."*

3. **Contention**

On behalf of the petitioners

Learned counsel for the petitioners contends that though the petitioners are ready and willing to fulfil their part of contract/agreement dated 18.07.2023 whereby the complainant as well as the present petitioners have signed the said document vide which the petitioners undertook to repay total amount of Rs.6 lacs out of which Rs.5 lacs already stands paid. In support thereof, he would refer to the reply dated 10.08.2024 filed by way of an affidavit of Dalbir Singh, PPS, Deputy Superintendent of Police, Sub Division NRI, Jalandhar which has recorded to the following effect:-

> *"9. That the answering deponent has a great respect for this Hon'ble Court and the order dated 14.06.2024 and*

> *09.07.2024 passed by this Hon'ble Court has been duly complied with by the answering deponent."*

Learned counsel for the petitioners has drawn attention of this Court to para No.3 of the said reply, which would read as under:-

> *"3. That it is respectfully submitted that concededly, all the payment mentioned in para no.9 of the petition has been received by the complainant. But it is made clear that the petitioners have wrongly mentioned one entry amounting to Rs. 2,00,000/- dated 18.07.2023 in para no.9 of the petition rather the complainant received Rs. 1,00,000/- in cash instead of Rs.2,00,000/- However, the petitioner no.1 also made agreement dated 18.07.2023 with the complainant in this regard and he duly signed the said agreement. Copy of agreement dated 18.07.2023 is appended herewith as Annexure: R-1/T."*

Deriving support from the reply filed by the State and the agreement dated 18.07.2023 which shows the signatures of husband of the complainant as well in which it is recorded that Rs.1 lakh in cash is to be paid by the petitioners, which they are ready and willing to pay back to the complainant.

<u>On behalf of the complainant</u>

Learned counsel for the complainant submits that signatures on the said document of the complainant are forged and in that regard a complaint was made subsequently to the police authorities, as a result of which, other offences under Sections 465 and 468 IPC stands added vide DDR No.2 dated 16.07.2024. He has drawn attention of this Court to para 7 of the aforesaid reply filed by the State which reads as under:-

> *"7. That it is respectfully submitted that during investigation, Sections 465 and 468 IPC was added vide DDR No.2 dated 16.07.2024."*

<u>On behalf of the State</u>

Learned State Counsel appearing on advance notice and clarifies at this stage that offence under Sections 465 and 468 IPC were added vide DDR No.2 dated 16.07.2024 not on account of alleged forgery of document on 18.07.2023 but for the allegations qua forgery of offer letters dated 12.08.2021.

4. **<u>Analysis</u>**

Be that as it may, the fact qua the payment of Rs.5 lacs already made by the petitioners stands verified according to reply of the State vide para No.3 dated 10.08.2024 and as per the clarification submitted by the State, the signatures on the agreement dated 18.07.2023 have not been disputed by the complainant ever before the investigating officer and no provisions of IPC have been added on that account. Accordingly, there is no reason to disbelieve the assertions at this stage to find out that prima facie major part of the transaction stands satisfied by way of refund by the petitioners back to the complainant-respondent. Apart from above, the State is also unable to put forth any other incriminating material to force upon the custodial interrogation of the petitioners at this stage.

5. **<u>Decision</u>**

In the light of above, the petitioners are directed to be released on anticipatory bail subject to their joining investigation with the Investigating Officer concerned within a period of one week from today, on furnishing of personal/surety bonds to his satisfaction. The petitioners shall also abide by the terms and conditions as envisaged under Section 438(2) of Cr.P.C which are reproduced below :-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.

However, it is made clear that in case the petitioners do not comply with the aforesaid directions of joining the investigation within a period of one week, the order passed by this Court today shall automatically stands cancelled.

In the aforesaid terms, the present petition stands allowed.

(SANDEEP MOUDGIL)
JUDGE

20.11.2024
Poonam Negi

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