



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

104

CRM-M-33863-2024
DECIDED ON: 18.07.2024

JASPREET KAUR

... PETITIONER

VERSUS

STATE OF PUNJAB & ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. D.S. Saini, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 34, dated 08.04.2021, under Sections 406, 420 and 120-B IPC (Section 201 IPC and Section 13 of Punjab Travel Professions Regulation Act, 2013), registered at Police Station Chamkaur Sahib, District Rupnagar (Punjab).

2. Facts

The facts as alleged in the FIR are that Gurdev Singh son of Mehar Singh resident of Ward No.3 Mohalla Raiwara, Chamkaur Sahib,

District Rupnagar moved an application No.3435 dated 11.12.2020 to the SSP, Rupnagar against Inderjit Singh son of Darshan Singh and his wife Jaspreet Kaur (present applicant/accused), residents of village Chalaki, Tehsil Morinda, District Rupnagar for defrauding him lacs of rupees on the pretext of sending abroad. Complainant Gurdev Singh in the application submitted that he is employed as S.S.A in Electricity Board. The house of Harpreet Singh son of Bhupinder Singh is adjacent to his house. He is having good relations with said Harpreet Singh. Sometime ago, Inderjeet Singh and his wife Jaspreet Kaur, who are relatives of Harpreet Singh stayed in the house of Harpreet Singh. The parental address of Jaspreet Kaur is House No. 162, Village Jaidan, Mor, District Bathinda. The complainant came into contact with aforesaid Inderjit Singh and his wife Jaspreet Kaur. They told the complainant that they are sending persons to Canada or any other countries on work permit. Jaspreet Kaur started making phone calls to Ramanpreet Kaur daughter of the complainant and she took Ramanpreet Kaur in confidence. Complainant Gurdev Singh also agreed with said Inderjit Singh and his wife Jaspreet Kaur to send his daughter Ramanpreet Kaur to Canada and for this, Inderjeet Singh and Jaspreet Kaur told that Rs. 14.00 lacs would be required. After some days, complainant handed over passport of his daughter Ramanpreet Kaur and other documents to Inderjit Singh. As per demand of Inderjeet Singh and his wife Jaspreet Kaur, complainant transferred Rs.50004.72 on 6.2.2020, Rs.1,50,014.16 on 10.02.2020, Rs.2,00,023.60 on 17.3.2020, Rs.1,00,004.72 on 13.5.2020, Rs.80,004.72 on 6.8.2020, in the bank account No. 50200038112886 in HDFC Bank which is in the name of one Malkeet Singh. Said Malkeet Singh also came to the house of complainant and

the complainant also paid Rs.70,000-80,000 in cash to said Malkeet Singh on the asking of applicant/accused. The complainant also paid Rs.1,50,000/- through google pay in the account of Manish Chawla and Shakti Finance Service. He paid total amount of Rs.11,10,000/- to them. The remaining amount was agreed to be paid after completion of work. Inderjeet Singh and his wife Jaspreet Kaur on receipt of aforesaid amount told that the work would be done in few days. When after some days, the complainant contacted Inderjit Singh and his wife, they told that there is flight of daughter of the complainant and they told the complainant to bring his daughter at Chandigarh. The complainant along with his daughter went to Chandigarh. Inderjit Singh and Jaspreet Kaur told the complainant that the flight is from Delhi and they themselves took Ramanpreet Kaur to Delhi in some vehicle. Believing them, the complainant sent his daughter with them. However, the Inderjit Singh and Jaspreet Kaur took the daughter of complainant to Rohtak and they after staying here for 2-3 days, ran away leaving the daughter of the complainant in the house alone while she was sleeping. They removed the sim of the phone of daughter of the complainant and took away phone of the daughter of the complainant with them. On 5.9.2020, Ramanpreet Kaur contacted the complainant and informed about the whole things and then the complainant brought back his daughter from Rohtak. He also got lodged report about this in police post Rohtak. The house in which Inderjit Singh and his wife Jaspreet Kaur had kept their daughter at Rohtak, the complainant locked the said house and handed over the key to the owner of the house. The complainant further submitted that, Inderjeet Singh and his wife have cheated him. The passport and other documents of

Ramanpreet Kaur are with them. They have switched off their mobile and they are unable to contact Inderjit Singh and his wife Jaspreet Kaur.

3. Submissions

On behalf of the petitioner:

Learned counsel for the petitioner has submitted that the petitioner has not committed any offence and has been implicated falsely in the present case. It is further submitted that not even a single penny has been transferred in the account of the petitioner. Moreover, the alleged amount has been transferred in the account of one Malkit Singh and another transaction to the tune of Rs.1,50,000/- has been made to Manish Chawla and to Shakti Finance Service by way of Google Pay. There is no documentary evidence available with the investigating agency to show that the alleged money has been given to the petitioner at any point of time. 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. Further submission is that custodial interrogation of the petitioner is not necessary as nothing is to be required from him.

On behalf of respondent-State and the complainant

On the other hand, learned State Counsel submits that the investigation of the case is still pending and custodial investigation/interrogation of the petitioner would be required to culminate the investigation into a logical end. Moreover, the allegation against the petitioner is with regard to duping of lakhs of rupees from the complainant on the fake

promise of sending his daughter abroad. Accordingly, prayer for dismissal of the present petition has been made.

Heard learned counsel for the respective parties.

4. Analysis and conclusion:

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.

The allegation against the petitioner is serious in nature as she along-with her co-accused has cheated the complainant to the tune of Rs.11,10,000/- on the pretext of sending her daughter abroad, 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. Such an allegation certainly requires adequate and intense investigation to unearth the truth. Moreover, nowadays such type of offences are on the rise in the society causing unnecessary harassment and humiliation to the innocent persons for not fault on their part. The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail because an element of cheating is involved in it. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

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 is 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.

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.

*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.”

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.”

Considering the fact that the allegation against the petitioner is of serious nature wherein she has indulged himself in the immigration fraud which is on high rise these days and these travel agents are taking undue advantage of the unemployed youth by duping them of lakhs of rupees by showing them the dreams of settling in the foreign country. Further more, there is sufficient evidence available to record to suggest that on the asking of petitioner and her husband, the complainant has transferred lakh of rupees in the account of Malkit Singh and Manish Chawla. Therefore, its a high time that this kind of practice needs to be curbed wherein these travel agents on the pretext of sending the innocent people abroad dupes them of lakhs of rupees.

Keeping in view the afore-said facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby, dismissed.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

18.07.2024
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(SANDEEP MOUDGIL)
JUDGE

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