

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35515-2023
Date of decision : 13.03.2024

ARUN KUMAR ATTRIPetitioner

Versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ritesh Thomar, Advocate for the petitioner.
Mr. Tarun Aggarwal, Sr. DAG, Punjab.
Dr. Sumati Jund, Advocate for the complainant.

PANKAJ JAIN, J. (ORAL)

Apprehending his arrest in FIR No.0183, dated 15.06.2023, registered for offences punishable under Sections 406, 420 of the Indian Penal Code, 1860 at Police Station Derabassi, District SAS Nagar, the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

2. As per the contents of the FIR it has been alleged as under:

“xxx Heard upon the application under Section 156 (3) Criminal Procedure Code, 1973 (hereinafter referred as Cr.PC) filed by complainant seeking directions for SHO, PS Dera Bassi to register an FIR under Sections 323, 325, 403, 406, 420, 506 of Indian Penal Code (hereinafter referred to as IPC) against respondent no. 1. As per the allegations of the complainant respondent no. 1 had taken an amount of Rs. 24,40,000/- from the complainant through checks and later refused to return the same asserting that he had already made the payment six years ago. Also, it is alleged that the respondent NO.1 threatened the complainant with dire

consequences. A complaint was given to Senior Superintendent of Police, SAS Nagar, Mohali, but no action has been taken till date. Hence, the application under Section 156 (3) Cr. PC was filed before this Court. Report of the concerned SHO was called and as per the said inquiry report, after recording the statements of the parties, it has been opined that respondent no. 1- Arun Kumar Attri had taken the amount of Rs. 24,40,000/- from the complainant by inducing him with the pre- planned conspiracy to cause wrongful loss to the complainant and wrongful gain to himself. It has been reported that the respondent no. 1- Arun Kumar had thus cheated the complainant and has committed the offenses punishable under Section 406 and 420 of I.P.C. I have perused the record of the case. Qua the application under Section 156(3) Cr.P.C. Hon'ble Supreme Court of India in Lalita Kurnari Vs. Govt. of UP 2014 (2) SCC 1, has held: "111) In view of the aforesaid discussion, we hold: i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offense and no preliminary inquiry is permissible in such a situation. ii) If the information received does not disclose a cognizable offense but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offense is disclosed or not. iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. must disclose reasons in brief for closing the complaint and not proceeding further. iv) The police officer cannot avoid his duty of registering offense if cognizable offense is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses acognizable offence. v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under: a) Matrimonial

disputes/ family disputes b) Commercial offences c) Medical negligence cases d) Corruption cases e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry. ii) Since the General Diary/Station Diary/Daily Diary is the record of all information received In a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above. 112) With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits." In view of the above said judgment, as from the inquiry of police it has been disclosed that a cognizable offence has been committed against the complainant, exercising powers u/s 156 (3) Cr.P.C., present complaint is ordered to be sent to police station concerned with the direction to SHO, P.S. Dera Bassi, to register the FIR against respondent No.1 - Arun Kumar and to investigate the matter and to file police report in the Court after investigation.xxx"

3. The petitioner himself has appended copy of the legal notice received which shows that an amount of Rs.24,36,986.34/- has indeed travelled to the account of the petitioner, paid by the complainant. The matter was referred to the mediation.. The mediation has failed.

4. Counsel for the petitioner has eloquently argued that from Annexure P-10, it is evident that money has been paid back to the complainant and further submits that be that as it may, even if the amount

has not been paid back, at the end of the day the dispute relates to monetary transaction and no criminal offence is made out. Reliance is being placed upon law laid down by Apex Court in the case of **Ramesh Kumar vs. State of NCT of Delhi, Criminal Appeal No.1741 of 2023 (Arising out of SLP(Crl.) No.2358 of 2023)** *decided on 4th of July, 2023* and that judgment passed by this Court in **CRM-M No.25790 of 2022** titled as **Anil Taneja vs. Sate of Haryana and others**, *decided on 1st of September, 2022*.

5. Counsel for the complainant as well as State Counsel on the other hand submits that its a case wherein an old man was allured by the petitioner and his family during the difficult times of the Corona. The complainant was alone and was continuously interacting with the petitioner and taking benefit of those times the complainant was taken for a garden walk by the petitioner.

6. On being asked specifically, counsel for the petitioner is fair in his admission that the petitioner never responded to the legal notice.

7. I have heard counsel for the parties and have gone through records of the case.

8. The facts of the case narrate how an old person living single was allured by the petitioner. Initially to build trust money borrowed was returned however during Corona a huge amount was usurped. Not only that, during the course of hearing Court was also made to taste the pill by the accused along with the complainant. To begin with, he expressed his intention to settle the matter but later came up with the stand that majority money stands paid that too in account of the complainant. Counsel for the

petitioner was asked to point out transfers made by him. He highlighted them, the same came out to be Rs.2.5 lac only. On being asked how rest of the money was paid. He had no clue.

9. As per settled law laid down by Apex Court in **Gurbaksh Singh Sibbia vs. State of Punjab, 1980 (2) SCC 565**, reiterated in **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1** the Court while considering prayer for pre-arrest bail has to consider as to whether the accusation appears to be actuated by *mala fides*, nature of seriousness of the proposed charges, the role attributed to the applicant and the probabilities of securing presence of the applicant during the course of trial and as to whether there is any apprehension that the applicant will tamper with the witnesses or evidence. It is the aforesaid considerations which need to be balanced by the Courts while considering grant of pre-arrest bail.

10. Keeping in view the conduct of the petitioner, this Court does not deem it fit to grant discretionary relief of pre-arrest bail.

11. Accordingly, the petition is dismissed.

March 13, 2024		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No