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2024:PHHC:122196

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34720-2024
DECIDED ON: 03.09.2024

SUNIL JAGDISH RAHEJA ....PETITIONER

VERSUS

STATE OF HARYANA AND ANR. ....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gautam Dutt, Advocate and
Mr. Vishal Sharda, Advocate for the petitioner.

Mr. Surender Singh Pannu, Addl. A.G., Haryana.

Mr. Ajayvir Singh, Advocate for respondent No.2.

SANDEEP MOUDGIL, J (ORAL)

Relief

1. The jurisdiction of this Court has been invoked under Section 528 of BNSS, 2023 for setting aside order dated 17.07.2024 (Annexure P-8) passed by learned trial Court in CRM/314/2024 in FIR No.824, dated 19.08.2023 under Sections 406, 420 IPC and Section 24 of Immigration Act, registered at Police Station Sadar, District Karnal.

2. The case of the prosecution set up against the present petitioner can be well read out from the FIR which is as under:-

> *"Copy is presented, To S.P Karnal, subject Regarding taking legal action against Ankur Babbar son of Surinder Raheja resident of Amritsar Mobile No. 918076168509 and Sunil Raheja Mumbai Mobile No. 79154105427 for cheating. Sir, this is the request that I am Krishna Lal son of late Shri Kashi Ram Sharma resident of village*

Kachhwa district Karnal and I request as follows:-my younger son namely Divanshu Sharma after passing the 12th standard examination was employed on an electric shop. Amit Sharma son of the brother-in-law of his brother is the resident of Village Goli, also used to come at the shop. One day, some talk took place between his son and Amit at their shop. Amit told the complainant that the son of his maternal father-in-law, who is the resident of Assandh, had gone to America some time back through the accused persons Ankur Babbar and Sunil Raheja agents and he was also got employed. 2. Amit and Divanshu after discussing with each other started making plans for going abroad and made a telephonic call to Sahil and Sahil gave a number of the aforesaid agent. Amit gave a call on the mobile phone of the accused Ankur Babbar, who agreed to meet them at Karnal on his way from Amritsar to Delhi and agreed to provide information regarding sending abroad. After some days, Amit received a phone call from Ankur Agent and he told that he is going to Delhi and where ethey should meet and they agreed to meet near Jhilmil Dhaba, Baldi Bye-pass, Karnal. 3. therafter I talked to my brother-in-law Vikas about sending my son abroad and said that Amit is interested in going abroad and Diwanshu is also insisting on going abroad with him. we have to meet the agent at Jhilmil Dhaba. I reached Jhilmil Dhaba from my shop with Diwanshu and my nephews Sunil and Vikas, Amit and my brother Subhash. The above agent came to Jhilmil Dhaba and we talked to him and the above agent said that it is my brother who has employed your relative Sahil in America and the above agent started building his trust on us by telling us all kinds of things and we started believing the words of the above agent. 4. It is that after that our conversation continued and the above agent said *that I will take Rs. 60 lakh per person in exchange for sending them to America and getting them a job there. But after a long discussion, we agreed to send us to America for Rs. 55 lakhs and get us a job. It was also decided that the above accused will make all the arrangements for our stay and food till we get a job. 5. After that, the above agent told us that first we will have to pay Rs. 5,00,000 per person in cash and passport and other documents so that I can start your work and said that if I need any documents then I will call you and you can WhatsApp those documents. I said that I don't have WhatsApp on my phone. I will WhatsApp the documents for you from my nephew's phone or my brother-in-law Vikas's phone. The agent said about the remaining payment that & 30 lakhs will be given after the visa is received and the rest of the payment will have to be given on the day of the flight. Also said that if my WhatsApp number 918076168509 is not available then contact my partner Sunil Raheja on phone number 79154105427. 6. He told that When I call the children to Delhi, you send them to Delhi. After this, I kept talking to my nephews Sunil and Vikas. In February 2022, we met again with the above agent Ankur Babbar and we gave Amit and Diwanshu's passports, other documents and Rs 5 lakh cash per person, a total of Rs 10 lakh. After this, the agent left assuring us that the work will be done soon. 7. After that we kept talking to the agent. The agent called Diwanshu and Amit to Delhi in May-June 2022 and their photos were taken and they were sent back. After a few days, my nephew and my brother-in- law Vikas met the Delhi agent and the agent said that your visa is about to come, you keep your children's money ready. After a few days, we got a call that the visa has come, we said give us your account number, we will get it done through*

RTGS, but the above accused refused and said that the money is required in cash only, trust us, it is our daily work, the next money I will get deposited in it by giving you the account number. We borrowed money from here and there and sent Rs. 30 lakhs to Delhi Dwarka Vegas Mall on 28.10.2022 through my brother-in-law and nephew on the instructions of the above agent where the above accused took this money from them. 8. After that on 02.11.2022 Amit and Diwanshu got a call that all of you come to Delhi, your tickets have been booked and bring 3000 dollars and 5 lakh cash. After this my brother-in-law Kapil, Vikas and I myself reached Gurgaon hotel at the address sent by them along with my son Diwanshu. But the above agent was not found there. Then the above accused talked to Vikas on the phone and called him to Mahipalpur Delhi. When we reached there, the above agent Ankur Babbar sent his partner Sunil Raheja and said to hand over the money and both the children to him and you go. Because his flight was on 05.11.2022, which we came to know after going to Delhi. After that, my son was sent to Sarenam via different countries. On 11.11.2022, he asked to pay the money, we said you should meet us and then we will give you money. But he refused to meet and said that he is sending the account number, you deposit the money. As per his instructions, Ankur Babbar sent the account number on my nephew's phone and I sent Rs. 5 lakh on 18.11.2022 and Rs. 5 lakh on 22.11.2022 to account no. 083105002993 bank ICICI, Laxmi Nagar, Delhi, Parkhar Tour and Travel. We cailed, he did not pick up the phone. But on 12.12.2022, neither we received a call from our son nor is there any information about him. When we ask them, they say that we will find out soon and now for the past few days, neither his phone is reachable nor is he *talking. My nephew and my brother-in-law went to look for him, both of them were not found here. Whereas we had talked about sending him directly to America, after going there, we talked to the boy, the boy said that they are harassing us, we are not getting anything to eat and drink. They snatched the phones of the boys and then a call came from some other number that the boy has reached Panama. Therefore, you are requested that keeping the above facts in mind, a case should be registered against the above culprits for cheating us and extorting money and legal action should be taken. You will be highly grateful."*

Factual Matrix

3. The factual matrix can be culled out as the petitioner is allegedly running an immigration business along with other co-accused Ankur Babbar. The complainant has averred that he met Ankur Babbar who showed her willingness to send his son Divanshu Sharma and other relatives to United States and on that account a total consideration of Rs.55 lacs was fixed. It is worth noticing here that this amount of consideration was only qua the son of the complainant but not for other relatives. Part payment of Rs.5 lacs was paid in cash on 02.11.2022 along with U$ 3000 in cash and flight was boarded on 05.11.2022. Another amount of Rs.5 lacs was deposited on 18.11.2022 in the account of co-accused-Ankur Babbar and again an equal amount on 22.11.2022 was deposited in the account No.08315002993 of ICICI Bank as well. Since 05.11.2022, the complainant has averred not to have received any phone call or whereabouts of his son except one call to the effect that he has reached Panama.

4. Before proceeding further, the sequence of litigation as unfolded in the instant petition is worth noticing here i.e. earlier the

petitioner was granted interim bail by the Additional District and Sessions Judge, Karnal on 20.06.2024 and status report from the investigating officer was called upon which was filed on 29.06.2024 stating that the petitioner-accused has joined the investigation but has not cooperated qua the recovery of amount paid by the complainant and has also not disclosed about the whereabouts of his son Divanshu Sharma. It is on the basis of such status report, the anticipatory bail petition of the petitioner-accused was finally dismissed on 29.06.2024.

5. The petitioner was ultimately arrested on 17.10.2023 after dismissal of the anticipatory bail petition who thereafter filed an application seeking regular bail before the trial Court which was also dismissed on 21.11.2023. Another bail petition was preferred on 04.01.2024 before the trial Court in which he was granted bail vide order dated 11.01.2024.

6. Aggrieved against the said order of 11.01.2024 passed by District & Sessions Judge, Karnal granting regular bail to the petitioner-accused, the complainant moved an application seeking cancellation of bail on various grounds including that the trial Court has granted regular bail to the petitioner-accused primarily on account of compromise having been effected between the brother-in-law of the petitioner namely Vishal and the complainant observing that the petitioner has admitted his guilt and has undertaken to find out the missing son of the complainant if he does not oppose the concession of bail. The cancellation of regular bail before the trial Court was also sought on the ground of concealment of the fact that the petitioner-accused has though filed CRM-M-531-2024 seeking regular bail before this Court after his application for regular bail was dismissed by the trial Court on 21.11.2023 and the said petition before the High Court was got

withdrawn only on 12.01.2024 after the trial Court had granted him regular bail a day prior to that i.e. 11.01.2024.

Contentions

On behalf of the petitioner

7. Mr. Gautam Dutt, learned Advocate on behalf of the petitioner would submit that in terms of the compromise entered into between his brother-in-law Vishal and the complainant, he has returned the whole amount so far received, back to the complainant i.e. to the tune of Rs.55 lacs and in view of that compromise he is still duty bound to help the complainant for search of his son Divanshu Sharma as has been undertaken on his behalf by his brother-in-law Vishal, however, promise on his part was made by Vishal to the effect that he will help in efforts to trace complainant's son and never undertook to find out as after his son reached Panama, the petitioner has not been contacted by his son.

8. On the aspect of concealment of fact qua pendency of petition i.e. CRM-M-531-2024 before the trial Court is concerned, it was submitted that though the petitioner communicated to his earlier counsel not to file the petition but by that time same already stood presented in the Registry, however, it was not listed till 05.01.2024. it is in fact prior to listing of case for hearing on 12.01.2024 before the High Court, he got the regular bail from the trial Court itself on 11.01.2024 and in all fairness accordingly requested for withdrawal of petition bearing CRM-M No.531 of 2024 which was ordered to be "dismisssed as withdrawn" vide Annexure P-10.

On behalf of the State

9. Learned State counsel though could not deny the factum of compromise but vehemently argued that the petitioner-accused has admitted

to pay Rs.1 Crore 25 lacs to the complainant out of which 50 lacs stand paid to Jasmer (brother of the complainant) through mediator Chander Mani Narang. It is on that account, the regular bail was granted to the petitioner-accused by the trial Court on 11.01.2024. It is further submitted by learned State counsel that he has joined the investigation on 06.08.2024 and during interrogation suffered a disclosure statement to the effect that *“"I or Sunil Jagdish Raheja S/O Jagdish Raheja Resident H WING 705/706 PALM COURT COMPLEX LINK ROAD MALAD WEST MUMBAI PIN 400064 Police Station Bagur Nagar Mumbai. We work in sending boys from India to abroad through both the agents and I do not have any license to send them abroad. I and my friend Sunil Shastri used to send people abroad because we had sent many boys abroad through Sunil Shastri. Sunil Shastri called Divashu and Amit. After that, Sunil Shastri, Krishan Kumar, Divanshu and Amit Kumar met at Jhilmil Daba. We agreed to send Divanshu and Amit abroad for Rs 55 lakh per person. We asked for Rs. 50,000/- in cash and passport etc. and said that apart from this, if we need any documents then we will call you. You send the documents on WhatsApp and you will pay us Rs 30 lakh after the visa received and the remaining payment will have to be paid on the day of the flight. Krishan Kumar and Sunil Shastri had given me and Sunil Raheja Rs. 10 lakh in cash, after that we sent Divashu and Amit to Survanem (South America) where after sending them, we told the agent of these boys, Sunil Shastri, that we have sent both the boys to Survname (Sunny America). We had received our full payment. Beyond that, we do not know where Divanshu and Amit went and even before these children, Sunil Sastri had sent his children abroad many times through us and after a few days, we got a call from Sunil Shastri that a boy named Divanshu has went* *away he did not know the whereabouts and there was no clue about him. Then Sunil Shastri told us that this boy is my relative and in this regard I have informed him about this. Relatives will have to pay some money, in return for this, Sunil Shastri has sent four boys to Suryaname (South America) without money through us. Only Sunil Shastri knows about the boy named Divanshu. Till date I have not been able to know anything about boys namely Divanshu. Rs 20, 00, 000/- came to my share".*

10. Respondent No.2 has reiterated both the grounds which were taken before the trial Court in the application seeking cancellation of bail i.e. concealment of filing of petition before this Court bearing CRM-M-531-2024 and consequently the non-fulfilment of promise as made in the compromise/affidavit with Vishal brother-in-law of the petitioner qua finding out the whereabouts of his son.

11. No other argument has been raised on behalf of either of the parties.

Analysis

12. Be that as it may, I have given considerable thought to the submissions made on behalf of the petitioner as well as the complainant along with the reply filed by Nayab Singh, HPS, Deputy Superintendent of Police, Head Quarter, Karnal on behalf of respondent No.1, there is no iota of doubt that the petitioner might be involved in sending people abroad without having valid permit and had struck a deal to send the son of the complainant abroad against some consideration and moreover in disclosure suffered by the petitioner, he has admitted that 20 lacs came to his share whereas he has returned Rs.50 lacs to the brother of the complainant namely

Jasmer which has come on record in para No.3 of the reply of none other but of the State.

13. It is also not disputed that the son of the complainant has reached Panama and neither of the parties have put forth any question qua the destination in United States to say that it was any other place promised at the behest of the petitioner-accused. As far as contention of the complainant regarding being unaware of the whereabouts of his son is concerned, he has received a telephonic call only from Divanshu Sharma who told that he is situated at Panama and, therefore, this plea of the complainant does not carry much weight.

14. Going to the last leg of submissions on which cancellation of bail was allowed that the petitioner is guilty of concealing the material fact qua pendency of a petition bearing CRM-M No.531 of 2024 before this Court when simultaneously he was pursuing his remedy of bail before the trial Court as well is concerned, it has been well explained while giving the date-wise sequence that at the time of filing his bail petition before the trial Court, the petition in the High Court was not listed at all. The bail petition before the trial Court was filed on 04.01.2024 and the same was allowed finally on 11.01.2024 i.e. a day prior to the listing of petition in the High Court which actually came up for hearing on 12.01.2024. The petitioner very rightly withdrew the same pointing out that he has already got the bail from the trial Court on 11.01.2024. It is only a matter of availing legal remedies and there was no occasion for the petitioner to disclose before the High Court about pendency of his application before the trial Court viz-a-viz before the High Court since the petition in the High Court was not listed by the date when bail was granted to him before the trial Court on 11.01.2024.

15. This Court is conscious of the fact that the petitioner has joined the investigation, has also returned the amount whatever he has received and on the undertaking given by his brother-in-law Vishal, the understanding is that he will help the complainant in locating his son.

16. In view of the above, I am of the considered view that son of the complainant is situated at Panama as has come on record and his whereabouts are well known to the complainant even as per the case set up by the prosecution in its reply dated 31.08.2024. Moreover, it was only a promise to make efforts in search of complainant's son but not an undertaking in the form of a condition pre-requisite that he will definitely find out his son.

17. However, without going further into the depth of prosecution case, this Court at this juncture is ceased only with the consideration of a petition wherein setting aside of order dated 17.07.2024 has been sought vide which the regular bail of the petitioner was cancelled by the trial Court without any justifiable reasons recorded therein.

Decision

18. In the light of above discussion, this petition succeeds. The order dated 17.07.2024 (Annexure P-8) is hereby set aside and resultantly the petitioner is directed to be released forthwith from the custody on the same security and surety bonds which stands furnished by him at the first instance after he got the bail from the trial Court on 11.01.2024.

(SANDEEP MOUDGIL)
JUDGE

03.09.2024

Poonam Negi

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*