2024:PHHC:112019

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No.35143 of 2024
Date of decision: 28.08.2024

Kiran Bansal ... Petitioner

Vs.

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sarju Puri, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant one is the second petition for grant of pre arrest bail as filed by the petitioner in case arising out of FIR No.5 dated 05.02.2024 registered under Section 420 of IPC and Section 13 of Punjab Travel Professionals (Regulation) Act, 2014 at Police Station City Banga, District SBS Nagar. The petition previously filed by her bearing CRM-M No.14643 of 2024 had been dismissed on 27.05.2024.

2. The brief facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of a written complaint filed by complainant Jatinder Krishan

alleging therein that the petitioner was running an E+ILETS Centre at bus stand Banga. In addition thereto, she was engaged in the business of sending people abroad. Rekha Rani, a native of village of the complainant was working with the petitioner at her ILETS Centre. About two and half years back, she had introduced the complainat with the petitioner. Conversation had taken place between the complainant and the petitioner for sending him to Canada. Since his brother-in-law Avtar Singh and cousin Kamalpreet Singh were also interested to go abroad, therefore, all three of them had gone to the office of the petitioner who had assured to send them to Canada on work permit. She had asked them to deposit a sum of Rs.3 lakhs per person as advance and told them that an amount of Rs.16 lakhs would be deduted from salaries of each of them on their reaching abroad. She made representation to them that she had returned from Canada and assured that she would get them employed in the same company wherein she herself used to work. By gaining trust of the complainant and his relatives, she had taken an amount of Rs.3 lakhs from each of them in cash as well as their passports. She got their medical examination conducted at MAX Hospital, Chandigarh and handed over letters qua approval of visa. Subsequently, she sent photocopies of the visa issued in favour of the complainant and others, through Whatsapp message and asked them to deposit an amount of Rs.50000/- by showing that the said amount would be converted to

Canadian dollars and the complainant and his relatives would be receiving the same immediately on their arrival in Canada. The complainant had given the abovesaid amount to her.

3. As per the further allegations, since the fact that the complainant and his relatives had been going to Canada came to the knowledge of some of his acquaintances and co-villagers namely, Lovepreet Singh, Varinder Kumar, Jasbir Lal, Jasbir, Amandeep Kaur and Kirandeep, therefore, in the meanwhile, they had also asked the complainant to talk to the petitioner and to move applications on their behalf as well. The complainant had facilitated the meeting of the petitioner with the above named persons who too gave substantial amount of money and their passports etc. to the petitioner. The complainant further alleged that the petitioner, however, failed to send either of them abroad. On making inquiry, the complainant came to know that the visa sent to him was fake. The visas of others were also found to be fake. The petitioner by alluring and inducing them had extracted a sum of Rs.24,75,000/- from them when the complainant questioned her about the fake visa, she started making excuses. On insistence of the complainant, she gave two cheques for amount of Rs.1,50,000/- and Rs.50,000/- respectively. The second cheque was dishonoured. When the complainant made demand of refund of his money, the petitioner started extending threats and hurling abuses to him. On his complaint, the FIR

was registered. Investigation proceedings have been initiated. Apprehending her arrest, the petitioner moved an application for grant of pre arrest bail which was dismissed by the Court of learned Additional Sessions Judge, SBS Nagar vide order dated 13.03.2024.

4. As revealede, the petitioner then filed a petition bearing CRM-M No.14643 of 2024 seeking pre arrest bail befroe this Court. She was directed to join the investigation subject to returning the amount of Rs.2,80,000/- to the complainant. Though she joined investigation but failed to return the aforementioned amount, due to which the abovesaid petition had been dismissed vide order dated 27.05.2024.

5. The instant petition has been filed by the petitioner on the grounds and it has been argued by her counsel that the petitioner is not engaged in the business of travel agent rather she is a simple homemaker. As she was in dire need of money, she had asked her friend Rekha Rani who was working in an immigration office for monetary help. She had introduced him with the complainant who had agreed to lend an amount of Rs.2,80,000/- to her. As a security for return of the said amount, she had issued post dated cheques. She had even returned a sum of Rs.40,000/- out of the borrowed amount to the complainant but the latter had refused to return the security cheques and had started harassing her by moving false complaints.

6. It is further argued that infact it is the complainant who has

turned dishonest and has been exerting pressure upon her by misusing the security cheques. False story has been concocted by him. No other acquaintances or relative or native of his village who had allegedly parted with money had lodged any complaint against the petitioner. She is ready to join the investigation. Her custodial interrogation is not required. Due to some miscommunication between her counsel and herself she could not give an amount of rupees one lac to the complainant though she had prepared the demand draft for the said amount in favour of the complainant during pendency of CRM-M No.14643 of 2024. While asserting that in the peculiar circumstances of the case, the petition is very much maintainable, it is urged that the same deserves to be allowed. To fortify his argument, learned counsel relies upon **Dr. Fakir Chand Hembram @ Phakir Chand Hembram v. State of Jharkhand through Vigilance**, 2008 (28) R.C.R. (Criminal) 425; **Sri Sudip Sen v. The State of West Bengal**, 2012 (7) R.C.R. (Criminal) 12 and **Bhisham Singh v. State of Haryana**, 2024 NCPHHC 48105.

7. The respondent-State has filed status report submitting therein that there are specific and serious allegations against the petitioner. As many as, 11 FIRs of similar nature had been lodged against her and she is facing trial in five of them till date. She has even been convicted in one case bearing FIR No.38 dated 05.05.2018 registered under Section 420 read with Section 120-B of IPC at Police Station Sadar Banga. Her

custodial interrogation is required for conducting thorough investigation in the matter by the police. It is further argued tht the instant one being the second petition for grant of anticipatory bail, the same is not maintainable as there is no change in the fact situation. Therefore, it is urged that the petition does not deserve to be allowed.

8. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record.

9. The allegations against the petitioner are that she induced the complainant, some of his relatives, acquaintances and co-villagers to part with huge amount of money on the pretext of sending them abroad on work permit basis. She is further alleged to have prepared a fake visa and some visa approval letter and by fabricating false documents, sent photocopies of the same through Whatsapp to the complainant. She is alleged to have induced the complainant and others to part with an amount of Rs.24,75,000/- with an intention to cheat them. It has come on record that the previous petition for grant of pre arrest bail as filed by her i.e. petition bearing CRM-M No.14643 of 2024, had been dismissed keeping in view her antecedents and the fact that she had duped the complainant and others of huge amount of money and further by observing that her custodial interrogation was required to find out as to how she planned and executed the scam.

10. This petition has been filed after about two months of dismissal of the previous petition for grant of pre arrest bail as filed by the petitioner. So far as the question of maintainability of the present petition being the second one is concerned, the position of law in this regard has been discussed in citations relied upon by the petitioner. The principles of law as culled out from these citations are that though second/successive anticipatory bail is maintainable and cannot be rejected only on the ground of maintainability thereof but for such petition to succeed, the petitioiner must show some substantial change in the circumstances/fact situation and it would not be sufficient to show a mere superficial or ostensible change. There must be some change in the fact situation or in law requiring the earlier view to be interfered with. Considering the fact of the present case in view of the above discussed position of law with regard to the maintainability of the second petition for grant of anticipatory bail, the only ground which has been pressed into service by the petitioner for this purpose is that at the time of dismissal of her first application for grant of pre arrest bail, she was ready to pay an amount of Rs.1,40,000/- to the complainant and had even prepared a demand draft for a sum of Rs.1 lakh but due to some miscommunication with her counsel, she could not do so. This circumstance does not appeal to this Court to be a sufficient reason amounting to some specious and substantial change in the fact situation.

11. That apart, even otherwise the allegations which have been levelled against her are quite serious in nature. She has been involved in several other cases of similar nature. She is still facing trial in five of such cases and has been convicted in one case of cheating. As such, the argument raised by her that she is a simple homemaker and is not engaged in the business of sending people abroad cannot be acceptd to be correct. There are allegations of her deceiving several acquaintances, relatives and co-villagers of the complainant apart from he himself thereby depriving them of huge amount of money. For conducting thorough investigation in the matter by the police and to unearth the manner in which she had been operating as well as for recovery of the amount of money extracted by her from the complainant and other persons, her custodial interrogation is must.

12. It is well settled proposition of law that arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. The powers of anticipatory bail are extra ordinary and the same are to be exercised sparingly in exceptional circumstances. The judicial discretion conferred upon the Court has to be properly exercised after application of mind as to the nature and gravity of the accusation, possibility of applicant fleeing from justice and other factors to decide whether it is a fit case for grant of anticipatory bail as such grant to some extent interferes in the sphere of investigation of an

offence. The Court has also to see that an order of anticipatory bail should not operate as inroad in the normal legal procedure of criminal cases by the trial Court. The custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C. The Court must be circumspect while exercising such power for grant of anticipatory bail and it should not be granted as a matter of rule and has to be granted only when the Court is convinced that exceptional circumstances exist to resort to that extra ordinary remedy. In the present case, no such exceptional circumstances warranting exercise of the powers for grant of anticipatory bail by this Court are existing. As such, I am of the considered opinion that the petition does not deserve to be allowed. Accordingly, the same is dismissed.

(MANISHA BATRA)
JUDGE

28.08.2024
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No