



104 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH

CRM-M-35788-2024
DECIDED ON: 29.07.2024

BRAJINDER

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Namit Khurana, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in FIR No. 44, dated 07.03.2024, under Sections 406, 420 of the Indian Penal Code, 1860 (for short 'IPC') and Section 24 of Immigration Act, 1983, registered at Police Station Raipur Rani, District Panchukla.

2. The present case stands registered at the instance of Shanky Kumar on the allegations that the accused persons namely Pankaj, Vicky, Baljinder and Azad in connivance with each other hatched a conspiracy and duped an amount of Rs.12,30,000/- from the complainant-Shanky Kumar on the pretext of sending him abroad.

3. It has been contended by learned counsel for the petitioner that no specific allegation has been levelled against the petitioner. The allegation is that the complainant had a telephonic conversation with Baljinder Singh through the mobile of the co-accused. 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 and that no assurance was given by the petitioner to the complainant. Moreover, no amount has been transferred or deposited in the account of the petitioner. Hence, the allegations against the petitioner are vague and baseless. Further more, in the FIR no where it is mentioned that the petitioner has ever collected any document and the name of the petitioner has been mentioned in the FIR as Baljinder Singh whereas, the real name of the petitioner is Brajinder, meaning thereby, the complainant even do not know the name of the petitioner. There is also an unexplained delay of three months in lodging the FIR.

4. Notice of motion.

5. On the asking of this Court, Mr. Baljinder Singh Virk, Sr. DAG, Haryana accepts notice on behalf of respondent-State whereas, Mr. Joginder S. Dhankhar, Advocate has put in appearance on behalf of the complainant and filed his power of attorney, which is taken on record. Learned State counsel assisted by counsel for the complainant has opposed the prayer made in the present petition stating that there is sufficient evidence against the petitioner to prove his guilt. The investigation of the present case is at initial stage.

6. Heard learned counsel for the parties.

7. No other argument has been raised by either of the parties.

8. 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.

9. 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.”

10. A perusal of the FIR reveals that the petitioner lured the complainant to part with a huge amount of money running into lakhs on a false assurance that he would be sent to America. However, the petitioner and his co-accused handed over the ticket and visa for Dubai and from Dubai to Armenia and from Armenia to Russia, which later on, after inquiry from some know person, found to be fake. Hence, *prima-facie* case of cheating, allurements is made out against the petitioner. The argument advanced by learned counsel for the petitioner with regard to the fact that the complainant has wrongly mentioned the name of the petitioner as ‘Baljinder

Singh’ instead of ‘Brajinder’ is not sustainable in the light of the factg that the complainant in his supplementary statement got clarified the said fact.

11. Keeping in view the role attributed to the petitioner, this Court is of the view that their custodial interrogation is required to collect the material evidence, which may further enable the Investigating Agency to unearth the ramifications involved in the present case and that will ultimately help the Investigating Agency to reach to a logical conclusion.

12. In view of the discussions made hereinabove, this Court is of the firm view that the petitioners do not deserve the concession of pre-arrest bail, as such the same is dismissed being devoid of any merits.

(SANDEEP MOUDGIL)
JUDGE

29.07.2024

Sham

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>