(212A)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37210-2024
Date of Decision:20.04.2024

ASHU SHARMA

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Bijender Singh Dhankar, Advocate
for the petitioner.

Mr. Parveen Aggarwal, DAG, Haryana.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 BNSS, 2023 is for the grant of anticipatory bail in case bearing FIR No.247 dated 02.10.2023 registered under Sections 406, 420, 467, 468, 471 IPC, 1860 and Section 10 of the Emigration Act, 1983 at Police Station Sadhaura, District Yamuna Nagar.

2. The present FIR came to be registered at the instance of Gagandeep Sharma son of Shri Rajesh Kumar and the same reads as under:-

> *Sir, Copy of complaint no.9019 dated 19.09.2023, office of Superintendent of Police Yamuna Nagar is as under- To Superintendent of Police, Yamuna Nagar. Subject Complaint against accused no.1 Meenu Sharma wife of Shri Ravinder Sharma, Mobile 9729403775, resident of Unsad, District Kurukshetra, 2. Ravinder Sharma son of Shri Veer Bhan, Mobile 393475602161, resident of Unsad, District Kurukshetra, presently resident of Italy (Europe), 3. Sanjay son of unknown, Mobile 9812502555, resident*

of Budha Part, Police Station Indri, District Karnal, 4. Ashu Sharma, Mobile 7027156103, son of unknown, resident of village Bhogpur, Police Station Sadhaura, District Yamuna Nagar on account of sending the applicant abroad (Croatia Europe), grabbing 7,80,000/- by forgery, by preparing forged offer letter and forged Visa. Sir, applicant submits as under: 1. That I applicant Gagandeep Sharma son of Shri Rajesh Kumar, am resident of Bootgarh, Police Station Bilaspur, District Yamuna Nagar. 2. That accused no.1 is my maternal aunt ('Mami") and accused no.2 is my real maternal uncle ('Mama'), who has gone to Italy for last many years, that accused no.2 last year in May, 2022 said to me (applicant) that he would call him also in some European country by getting Visa and from there he would call him to Italy alongwith him and started saying that his maternal aunt ('Mami") accused no.1 alongwith accused no.3 and 4 has opened an office for sending the people abroad in village Sarawa, Police Station Sadhaura, District Yamuna Nagar, go and meet them and facilitate my talks. 3. That thereafter I went to Sarawa in the office of accused, where accused no.1 & 4 told me that they would send him abroad (Europe), for which total expense of around 10,00,000/- would be incurred. Who started saying that firstly he has to give 40,000/- with passport and aadhaar card and other papers and the remaining amount has to be paid at different stages, as per the work done and firstly his medical would be done in Delhi, that in May, 2022 itself, accused sent me, Vijay resident of Village Kalsanda, District Kurukshetra and Lovish, resident of Ambala for getting the medical done to Delhi Midline Care Health Centre and accused no.3 remains in constant touch with us and he only sent us to health centre by directing auto driver, where our medical was conducted. Thereafter on dated 10.08.2022, I applicant gave my passport, aadhaar card and amount of ₹ 40,000/- to aforesaid accused no.1, 3 and 4 in their Sarawa office, whose informed that his job would be done very soon. 4. That at the same time, accused *no.2, who is my maternal uncle ('Mama') constantly kept speaking to me and as per his directions, I applicant kept paying the money to accused no.1, 3 and 4. On dated 21.08.2022, the accused called me in the office and told me that his Visa would come in first week of next month and asked me to arrange an amount of ₹ 5,00,000/-, that next day, I after borrowing an amount of 5,00,000/- from Taya's son Kuldeep gave to accused, thereafter accused again called me in the office on dated 10.09.2022 and gave a photocopy of a Visa of Croatia country, which had my photo and my name, on which Visa date was mentioned from 08.09.2022 to 07.12.2022 and accused no.1, 3 and 4 gave me the photocopy of Visa after taking ₹ 5,00,000/- from me, the copy of which is attached alongwith application. Even during this period, I kept speaking to my maternal uncle (accused no.2) and as per his directions, kept paying the money to accused no.1, 3 and 4. 5. That thereafter, I, on asking of accused no.2, I transferred 1,90,000/- in the account of accused no.1 on 26.09.2022 from the account of my uncle Arun. And accused no.1, 3 and 4 stated that they would arrange the ticket, at the earliest, thereafter on dated 28.10.2022, accused no.1, 3 and 4 handed over a letter of some company to me and asked me to pay an amount of Rs.50,000/-, because his ticket has to be arranged. Thereafter on dated 29.10.2022, I paid Rs.50,000/- in cash to accused no.3 in their Sarawa office, but thereafter when the ticket was not arranged for many days, then I spoke accused no.2 and 3, on which accused no.3 said that a group of 30 people would jointly go in the company, therefore, the problem is being faced and I have got his call recording also. 6. That after the expiry of the Visa date, I spoke to the accused again at different times, on which they stated not to bother, they would get extended the time limit of his Visa but in January, 2023, accused started saying that his original passport has got misplaced by them, they would get it search at the earliest or would get him the new one and they would again arrange for his Visa and for that it would take 2-3 months*

> *time, that I trusted the accused because accused no.1 and 2 are my real 'Mama-Mami. 7. That in April, 2023, I again met accused no.1, 3 and 4 and spoke through phone to all the accused but the accused kept avoiding by giving one or the other excuses and on being asked about the passport by me, told that his passport has been given in Embassy for getting the Visa. But even after passing of about one year, accused have not arranged my Visa, due to which I have suspicion that the photocopy of the Visa given by the accused and offer letter, have been forged by the accused and I am continuously asking the accused to either pay back my amount of Rs.27,80,000/- or to sent me abroad. But accused are neither returning my money, nor are sending me abroad, nor my original passport is being given back. It is therefore requested that by taking into consideration the aforesaid facts, came may be registered against the aforesaid accused under the appropriate sections and my amount of Rs.7,80,000/- be got recovered from the accused and I applicant be given justice. I shall be grateful. Dated 18/9/2023. Thanking you. Sd/- Gagandeep Sharma.*

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The petitioner was only a Manager/Servant in the office of the main accused Ravinder Sharma. No amount was ever deposited in the bank account of the petitioner or handed over to him. As he was ready and willing to join investigation, he was entitled to the concession of bail.

4. A reply dated 19.08.2024 by way of an affidavit of Rajesh Kumar, HPS, Deputy Superintendent of Police, Yamuna Nagar-II has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that as per the prosecution case, various amounts of money had been handed over to the other accused including the

petitioner. Apparently, the petitioner was in connivance with the other accused had cheated the complainant on the pretext of sending him abroad. Therefore, as the offence was *prima facie* established, he was not entitled to the concession of anticipatory bail.

5. I have heard the learned counsel for both the parties at length.

6. 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 was 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***.

7. A perusal of the FIR and the investigation conducted so far *prima facie* establishes that the petitioner and his co-accused received a huge amount of money on the pretext of sending the complainant abroad. However, neither was the complainant sent abroad nor was money returned to him. Forged documents were provided to the complainant. As the offence stands *prima facie* established and the investigation to be taken to its logical conclusion, the custodial interrogation of the petitioner is certainly necessary.

8. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

9. However, the observations made hereinabove are only for the purposes of deciding this bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

20.04.2024
JITESH

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