

207 (2nd case)

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

**CRM-M-38816-2023 (O&M)
Date of decision : 21.02.2024**

Nayak Nikitaben Vishnubhai

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Ms. Sharmila Sharma, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana for the respondent.

Mr. Salil Bali, Advocate for the complainant(s).

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail to the petitioner in FIR No.220 dated 12.05.2023, under Sections 120-B, 406, 420, 467, 468 & 471 of the Indian Penal Code, 1860, registered at Police Station Sector 7, District Panchkula.

(2) Above FIR was registered on the basis of a written complaint made by Kanav Sharma & Rakesh Bansal against Parth Jani, Rucha Jayesh, Mayur Kumar, Charm Joshi, Nikita Nayak (petitioner), Chinmay Prajapati &

Manish Sharma with the allegations that petitioner, in connivance with other co-accused, defrauded the complainant party to the tune of more than ₹ 2 Crores by showing forged and fabricated Job offer/Letters/ Labour Market Impact Assessment (LMIA)/documents from various Companies situated in Canada.

(3) Learned Counsel contends that petitioner was granted interim bail by this Court on 08.08.2023; in pursuance thereof, she has already joined investigation on various occasions. Also contends that Police has already recovered the desired material from the main accused-Parth Jani and petitioner has no role in the commission of alleged offence; nor she has issued any job offer/letter to any candidate, as alleged by the complainants. Further contends that petitioner is merely an employee (Receptionist) of M/s Pelican Immigration Consultants; hence, her custodial interrogation would not serve any purpose.

(4) On the other hand, learned State Counsel, on instructions from S.I. Parkash Chand, although acknowledged that petitioner has joined investigation; but he opposed the prayer on the premise that her custodial interrogation is required for recovery of the money.

(5) Similarly, learned Counsel for the complainant(s) also vehemently opposed the pre-arrest bail of the petitioner while submitting that she has played active role in connivance with the main accused-Parth Jani.

(6) Heard learned Counsel for the parties and perused the paper-book.

(7) There is no quarrel that petitioner was granted interim by this Court on 08.08.2023 and the order reads as under:-

“Contends that co-accused has already been granted interim protection by this Court.

Notice of motion.

On asking of the Court, Mr. Kiran Pal Singh, AAG, Haryana accepts notice on behalf of the respondent and seeks time to have instructions and/or file written response in the matter.

Mr. Salil Bali, Advocate has filed Memo of Appearance on behalf of the complainant.

Posted for 22.08.2023.

In the meanwhile, petitioner shall join investigation before the Investigating Officer. In the event of her arrest, the Arresting Officer would admit her to interim bail in the present case, till the next date of hearing, on her furnishing adequate bail and surety bonds to his satisfaction. The petitioner is also directed to abide by all the conditions as envisaged under Section 438(2) of Code of Criminal Procedure, 1973.

To be heard along with CRM-M-30645-2023 (P-2).”

(8) It is a matter of record that above interim order was extended from time to time and continuing till date. Again not in dispute that petitioner joined investigation on various occasions. There is no material to indicate that petitioner is a signatory to the MoU dated 17.05.2021; or that she was entrusted any money by either of the complainant(s). Even it is not the allegation of the complainant(s) that petitioner has forged any job letter. Since petitioner is merely an employee (Receptionist) of M/s Pelican

Immigration Consultants and she has already joined investigation from time to time; thus, her custodial interrogation would not serve any purpose.

(9) Consequently, there is no option except to allow the petition. As a result thereof, petition is allowed. Interim order dated 08.08.2023 is made absolute subject to the conditions as envisaged under Section 438(2) Cr.P.C.

(10) However, it is made clear that if during investigation of the main accused-Parth Jani, (whose bail application i.e. CRM-M-35441-2023 has been disposed off as not pressed vide order of even date), any incriminating material is surfaced warranting custodial interrogation of the petitioner, the State would be at liberty to move an appropriate application before this Court and same shall be considered in accordance with law.

(11) It is also made clear that petitioner shall fully co-operate with the Investigating Officer as and when called to do so for further investigation.

(12) The above observations be not construed as an expression of opinion on merits of the case; rather confined only to decide the present bail matter.

(13) Disposed off accordingly.

(14) Pending application(s), if any, shall also stand disposed off.

21st February, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes