



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

285

CRM-M-38342-2024
DECIDED ON: 12.09.2024

GURNEK SINGH DUSANJH

... PETITIONER

VERSUS

STATE OF PUNJAB & ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Subhash Aggarwal, Advocate
for the petitioner.

Mr. Sukhsandesh Chahal, AAG, Punjab.

Mr. Sarju Puri, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 94, dated 30.06.2024, under Section 420 IPC, registered at Police Station City Nawanshahar, District SBS Nagar (Punjab).

2. Facts

The present FIR stands registered on the statement of Avtar Singh against Gurnek Singh (petitioner) and his wife Gursimran Kaur for duping an amount of Rs.22,95,000/- on the pretext of sending his son abroad. Thereafter,

on the basis of the said complaint, inquiry was got conducted by DSP (D), SBS Nagar and thus, the present FIR was registered under Section 420 IPC.

3. Submissions

On behalf of the petitioner:

Learned counsel for the petitioner has submitted that the petitioner has not committed any offence and has been implicated falsely in the present case. It is further submitted that the petitioner filed a complaint under Section 138 of NI Act, 1881 against respondent No.2, which is pending adjudication and the present FIR is nothing but a counterblast to the afore-said complaint. 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.

On behalf of respondent-State and the complainant

On the other hand, learned State Counsel assisted by the counsel for the complainant submit that the investigation of the case is still pending and custodial investigation/interrogation of the petitioner would be required to culminate the investigation into a logical end. Moreover, the allegation against the petitioner is with regard to duping of lakhs of rupees from the complainant on the fake promise. Accordingly, prayer for dismissal of the present petition has been made.

Heard learned counsel for the respective parties.

4. Analysis and conclusion:

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.

The allegation against the petitioner is serious in nature as he lured the complainant to part with a huge amount of money running into lakhs on the pretext of sending his son abroad, which is sufficient for this Court to infer that the petitioner has defrauded the complainant. Hence, *prima-facie* offence under Section 420 IPC is made out against the petitioner. Such an allegation is certainly required adequate and intense investigation to unearth the truth. Moreover, nowadays such type of offences are on the rise in the society causing unnecessary harassment and humiliation to the innocent persons for not fault on their part. The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail because an element of cheating is involved in it. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

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.”

Considering the fact that the allegation against the petitioner is of serious nature wherein he has indulged himself in the immigration fraud which is on high rise these days and these travel agents are taking undue advantage of the unemployed youth by duping them of lakhs of rupees by showing them the dreams of settling in the foreign country. Further more the petitioner has received a sum of Rs.22,95,000/- from the complainant wherein direct allegations are levelled against him. Therefore, its a high time that this kind of practice needs to be curbed wherein these travel agents on the pretext of sending the innocent people abroad dupes them of lakhs of rupees.

More so, investigation is still going on in the present case. 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

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Keeping in view the afore-said facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby, dismissed.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

12.09.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No