IN THE PUNJAB AND HARYANA HIGH COURT

CHANDIGARH

CRM-M-40953-2024
Date of Decision:10.09.2024

JAI RAM

…..PETITIONER

VERSUS

STATE OF PUNJAB

…...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Verma, Advocate
for the petitioner.

Mr. J.S.Guru, AAG,Punjab

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SANDEEP MOUDGIL, J

Relief Sought

1. Jurisdiction of this court has been invoked for the second time under section 482 of Bhartiya Nagrik Suraksha Sanhita, 2023 for grant of pre-arrest bail to the petitioner in FIR No.0054 dated 26.03.2024(Annexure P-2) registered under Sections 406, 420 IPC, in Police Station Garshankar, District Hoshiarpur.

2. Case of the prosecution as narrated in the FIR is reproduced herein below:-

> "Copy of Complaint 2164-SSP dated 11-12-23, 10233-PD dated 5-12-23 UID NO 270778. To Hon'ble S.S.P. Sahib, Hoshiarpur. Subject:- Application for fraud against Jai

Ram son of Chhote Lal and his wife Name not known residents of House No: 238, Backside Gaba Pharmacy Village Garha Police Station & Tehsil Phillaur District Jalandhar for cheating of Rs. 10 lakh on account of sending abroad to Canada. Sir, It is requested that I, Vipan Kumar Ralh, son of Surjit Singh Ralh, resident of village Badesaro, Teh: Garhshankar District Hoshiarpur and requests as follows:- 1. That I was willing to go abroad to Canada and one of my relatives gave me the address of an agent who was from Phillaur and I took all my documents and went to Phillaur to that agent and I had just spoken that I met with Jai Ram in the same agent's office in Phillaur and then he started talking about sending people abroad to Canada by him as well and used to do fairly and he has taken me into his mesmerized talks and I came under his influence and it was agreed that said Jai Ram will send me to Canada for 22 lakh rupees and out of which he asked for 10 lakh rupees first and will take 12 lakh rupees after reaching Canada. I told him to come to his house at village Badesaro and will talk in details over there and on the same date, he came with his wife to my house at village Badesaron and I transferred to him my passport and five lakhs from my account to his account and the remaining five lakhs in cash was given in Phillaur in front of the witness at his office and his wife also gave full guarantee that you will be sent abroad because we have already sent many people to Canada and your work will be guaranteed. 2. That thereafter, he got me prepared some biometric documents and I went to Jalandhar VFS (Embassy) alongwith those documents and there I came to know that these papers are fake and I called him at that time only and he said to come back and I will give you the paper again and after that 3 times more biometric documents were prepared but those were also found to be fake, thereafter I told him that I do not want to go to Canada, you should return all my money. I have returned my money. 3. That till now neither he sent me abroad nor has returned my money. I have suffered a lot on vising his house and office again and again. I also made him call but he did not pick up the phone even and he did not even bother despite of my repeated requests. Rather he started threatened me that you do whatever you want as I do not care about any law, any ontoel, any court. So I request you to take appropriate legal action against him and his wife and to provide me justice. With Thanks Complainant: Vipan Kumar Ralh son of Surjit Singh Ralh resident of Badesro Tehsil Garhshankar District Hoshiarpur. Mob. 78883-69943"

Contentions

On behalf of the petitioner

3. It is contended by the learned counsel for the petitioner that the present FIR against the petitioner is sheer abuse of process of law because the complainant has already availed the remedy available to him under the law by filing a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short – 'NI Act'), in the year 2023 as such registration of present FIR for the same amount and cheque in question is absolutely illegal and erroneous because this will amount to double jeopardy. The decision on the complaint is yet to come and the matter is already subjudiced, therefore, no cause of action would arise in favour of the petition after filing of complaint under Section 138 of NI Act. He further argues that the notice of the complaint under Section 138 of NI Act was not served upon the petitioner but he came to know about the same when he visited Courts at Garhshankar and only thereafter, could arrange for a copy of the complaint, which shows the mischievous conduct of the complainant. Further, the counsel for the petitioner has placed reliance on three judgements of the different High Courts of the country and also two judgments of Hon'ble Supreme Court of India, to contend that after initiating proceedings under Section 138 of NI Act, the initiation of criminal proceedings by lodging FIR will certainly be a double jeopardy, and accordingly, the present petitioner is also is victim of double jeopardy. As such, the petitioner is liable to be granted anticipatory bail in the present case/FIR.

Notice of motion.

On behalf of the State

4. On the asking of the Court, Mr.Jaspal Singh Guru, Assistant Advocate General, Punjab, who is present in Court accepts notice on behalf of the respondent – State of Punjab and submitted that there are serious allegations of cheating and fraud against the petitioner. The petitioner took 22 lacs of rupees from the complainant for sending him abroad to Canada, out of which he demanded Rs.10.00 lacs in the first instance and remaining Rs.12.00 lacs were to be given on reaching Canada. Petitioner handed over his passport to the complainant and also paid Rs.5.00 lacs by bank transfer to the complainant. The documents, given to the petitioner by the complainant for submission in Embassy at Jalandhar, were found to be fake. As such, the petitioner has committed the offence of cheating and fraud and is liable to be tried for the offences under Section 406/420 IPC and his bail applicable is also liable to be dismissed.

Analysis

6. Heard and case file also perused.

7. It is seen from the case file that the petitioner had earlier filed CRM-M-22864-2024 to seek anticipatory bail in this very FIR, which was dismissed as withdrawn vide order dated 07.05.2024 (Annexure P-5). Now, the petitioner has filed the present petition again to seek anticipatory bail in FIR, Annexure P-2, in view of additional fact that the complainant had already filed complaint under Section 138 of NI Act as such criminal proceedings are barred after filing of complaint under Section 138 because it will amount to double jeopardy.

8. This proposition was resolved by the Apex court in ***"Sangeetaben Mahendrabhai Patel Vs State of Gujarat & Anr (2012) 7 SCC 621"*** wherein the court considered the very issue of whether a petition under section 420 IPC would be maintainable, during the pendency or even after conviction under Section 138 of the Negotiable Instruments Act, 1881 and the court held that there can be no question of it being violative of Article 20(2) of the Constitution of India as it does not amount to double jeopardy.

9. Further, the offences covered by Section 420 IPC and Section 138 of Negotiable Instruments Act, 1881 are quite distinct and different offences even though sometimes there may be overlapping of some facts but the ingredients of the offences are entirely different and sometimes the accused person may commit both the offences. Consequently, subsequent cases are not barred by any statutory provisions.

10. Further, since the first application for grant of anticipatory bail stands dismissed as withdrawn, the petitioner has been unable to prove the change in circumstances arising out after the dismissal of the first application.

11. In the light of above stated facts and discussion, no ground is made out for grant of anticipatory bail to the petitioner.

10.09.2024 (**SANDEEP MOUDGIL)**
sham **JUDGE**

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