IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45286-2022
Reserved on: 03.05.2024
Pronounced on: 18.05.2024

Amit Kumar Pabbi and another ...Petitioners

Versus

State of Punjab …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G.B.S. Dhillon, Advocate for the petitioners.

Mr. Sukhdev Singh, AAG, Punjab.

Mr. Akshay Chadha, Advocate for the complainant.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
173	09.09.2022	Dakha, Ludhiana, District Ludhiana	406, 420, 506 & 120-B IPC and Section 24 of Immigration Act

1. The petitioner apprehending arrest in the FIR captioned above, come up before this Court under Section 438 CrPC seeking anticipatory bail, by filing the present petition on 26.09.2022.

2. As per paragraph 13 of the bail petition and paragraph 9 of status report, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	106	09.09.2011	406/420 IPC	Nangal, District Ropar
2	117	13.12.2011	406/420 IPC	Anandpur Sahib

3. Petitioner’s counsel argued that the custodial investigation is neither required nor would serve any purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. Vide order dated 16.03.2023, the Coordinate Bench of this Court released the petitioner on interim bail, which is continuing till date. The Coordinate Bench of this court referred the matter for mediation vide order dated 17.11.2023 because the

counsel for the parties stated that there were chances of an amicable settlement; however, as per the mediator's report, the settlement could not mature.

5. I have heard counsel for the parties and gone through the pleadings.

6. Prosecution's case is being taken from the status report dated 12.01.2023 filed by the concerned DySP, which reads as under: -

> *"2. That the brief facts of the case are that complainant Kulwant Singh s/o Mota Singh r/o H. No. 1/244 College Road, Mandi MullanpurDakha District Ludhiana submitted one application to SSP Ludhiana (Rural) against the petitioners. This application was numbered as 1085-PC-1 dated 28-04-2022. He stated that he has one son namely Gursharan Singh and his son is married to Ratinder Kaur. They both are unemployed and they could not get any job. He decided to send both of them to abroad. He contacted petitioner Amit Pabbi in this connection. Said Amit Pabbi told the complainant that he is doing profession of Accountant and C.A. His wife Seem Pabbi is educated lady and doing work with him. Petitioner Amit Pabbi told the Complainant that he and his wife also doing the work to send people abroad. They are doing work of travel agency nicely. They told him that they will send his children to Canada within short period. The petitioner demanded amount of Rs. 70 Lakhs from the petitioner for sending his both children to Canada.*
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> *3. That in the month of January, 2020 Amit Pabbi and his wife Seema Pabbi came to his house and on their demand he make payment of Rs. 20 Lakhs to them and also handed over requisite documents. In the month of February, 2020 both the petitioners came to his house and on their demand he again paid Rs. 20 Lakhs to them in present of Surinder Pal Singh.*
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> *4. That in the Month of March, 2022 both the petitioners again came to his house and stated that their work has been done and file has been cleared. On their demand the Complainant again paid Rs. 10 Lakhs to them in the presence of Ravinder Kumar. But the petitioner Amit Pabbi returned the passports and other documents to the Complainant by post. On checking of passport it was seen that no visa has been granted to his children.*
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> *5 That on 19-04-2022 the Complainant along with his friend Harpreet Singh contacted the petitioners in their office and asked them that visa has not been sanctioned. In reply the petitioners told the complainant that what they want to do they have done and he can do what he likes. The petitioners threatened him not to visit again in their office. The petitioners insulted the complainant in the presence of his staff and gunman and pushed him out of his office. The petitioner requested the SSP Ludhiana (Rural) that the*

petitioners have committed fraud with him and FIR may be registered against them. The SSP Ludhiana (Rural) marked this application to DSP Dakha for enquiry.

6. That the DSP Dakha conducted enquiry and submitted his enquiry report on 02-07-2022 to SSP Ludhiana (Rural). The enquiry report reveals that the petitioners have committed fraud of Rs. 50 Lakhs with complainant Kulwant Singh. The petitioners did not send his children to Canada nor returned his amount. So the DSP recommended to register FIR against the petitioners. The SSP Ludhiana (Rural) raised some objections on this enquiry report to the DSP Dakha. The DSP Dakha removed the objections and send the case to the SSP Ludhiana (Rural) again. The SSP Ludhiana (Rural) marked this enquiry report to SP (Det.) Ludhiana (Rural) for his comments.

7. That in compliance with these orders the SP (1) Ludhiana (Rural) submitted his comments and recommended to register FIR as per recommendation of DSP Dakha vide his report dated 06-09-2022. The SSP Ludhiana (Rural) approved the enquiry report and passed orders for registration of FIR against the petitioners. In compliance with these orders, FIR No. 173 dated 09-09-2022 u/s 406/420/506/120-B IPC and u/s 24 of Immigration Act has been registered in P.S. Dakha against both the petitioners."

7. The petitioner's counsel has tried to build a case by arguing that the complainant has failed to provide any evidence of the alleged payment, which was supposedly made in cash without any receipt. This lack of evidence significantly weakens the complainant's case. Additionally, the complainant has been unable to demonstrate the source of funds for the alleged payment of Rs.50 lacs, further undermining the credibility of the allegations.

8. The complainant's counsel opposes such arguments as baseless.

9. Counsel for the State also opposes this argument of the petitioner and refers to status report and, based on instructions, submits that this is a false narrative, a concocted story to mislead the Court and deviate the court's attention from real issues, which is the fact that petitioner had cheated the complainant who was desperate to send his daughter to green pastures.

10. An analysis of these arguments leads to the inference that the concerned DySP had conducted an inquiry and found truth in the complainant's version, which was corroborated by evidence and there is no reason for this Court to disbelieve such an inquiry conducted. Given this, the petitioner is not entitled to bail on this ground.

11. The Petitioner's next argument is that the present FIR is to put pressure to settle a civil suit. The petitioner's involvement in a civil matter, a suit for permanent injunction, is based on an agreement to sell dated 15.04.2021, executed between the petitioner, Balwinder Singh, and the complainant, who is one of the witnesses to the agreement. He further submits that the petitioner is falsely implicated in the present FIR and just to put pressure on him in a questionable Civil Suit filed by Balwinder Singh on 23.08.2021 for permanent injunction vide Annexure P-3. This suit was filed against the petitioner by allegedly forging the agreement to sell dated 15.04.2021 of the petitioner's house, in which the complainant is one of the witnesses. He further submitted that the said civil suit was filed a year before the registration of FIR, raising doubts about its authenticity.

12. Counsel for the complainant refuted such argument and stated that even if the complainant is a witness in the said civil suit, he, in the capacity of a witness, has no financial interest. He further submits that these arguments prima facie establish one thing against the petitioner, which is that he knew the complainant, which led to the complainant reposing faith in him and was assured of sending his son and daughter-in-law to the foreign country.

13. An analysis of these arguments does not lead to the inference that the complainant, who was only a witness to the agreement, would have lodged a false complaint against the petitioner without any reason, whereas he was not a beneficiary in such agreement. Given this, the petitioner is not entitled to bail also on this ground.

14. The petitioner's counsel also seeks bail on medical grounds and submits that three months before the alleged allegation of receiving the amount and even after that, the petitioner was admitted to the hospital from 10th September 2019 to 17th September 2019 with Intra Cranial Hemorrhage left Ganglion-capsular Region and then again was admitted in the hospital from 26th April 2020 till 4th May 2020 with New Onset ICH left parietal Region bleed, the medical record is annexed at Annexures P-1 & P-2 with the petition, the fact of which goes to show that the petitioner was not in a normal condition as his right side of the body had gotten paralyzed so how could he even deal with the complainant in such a situation.

15. The State's as well as Complainant's counsel oppose such contention by submitting that the disease is not that serious, and State is well equipped to provide treatment in custody.

16. An analysis of this submission leads to a conclusion that the petitioner is not

stated to be hospitalized and given the stand of the State, the petitioner is not entitled to bail on medical grounds at this stage.

17. The petitioner's next ground for bail is that the complainant had retired as an Inspector from the Punjab Police, and with such kind of experience of dealing with criminals and solving crimes, it cannot be believed that he was unaware of the honest workings of most embassies. He further submitted that if the complainant was trying to procure visas legally, there was no occasion to pay Rs.50 lacs for getting a visa.

18. Counsel for the complainant opposes such arguments and states that it is well known that travel agents fill up visa applications by annexing those documents that facilitate the grant of a visa and then charge from the nominal fee in this regard, and such activities are also regulated. The complainant's counsel also opposed the arguments by the petitioner and stated that his son and daughter-in-law were desperate to go out of India, and the complainant could not say no to his children and then parted his hard-earned money and arranged some money from other sources. The complainant's counsel submits that the investigation did not point out that the complainant had not arranged such money or was making false allegations. He further submits that being retired as an Inspector from the Punjab Police, the complainant was well aware of leveling false allegations, which would lead to his prosecution under Section 182 IPC; as such, he would be the last person to make false allegations. The complainant's counsel submits that undoubtedly the conduct of the complainant in making payment to secure visas was unethical, immoral, and cannot be justified, but it would not be a ground to give bail to the petitioner who took advantage of such dilemma and slyly conned the complainant to handover a massive sum of Rs.50 lacs.

19. Counsel for the complainant also submits that after getting interim protection from this Hon'ble High Court in the present case vide the order dated 16.03.2023, petitioner no.1 entered into a compromise and gave an affidavit dated 13.06.2023 (Annexure R-2/1 in CRM-47185-2023), and entered into a compromise with the complainant dated 17.07.2023 (Annexure R-2/2 in CRM-47185-2023), thus admitting to his guilt, that he took money from the complainant and gave as many as 18 cheques to the complainant amounting to total of Rs. 37 Lakhs. However, two cheques dated 25.09.2023 and 25.10.2023 have been stopped by petitioner no.1, thus leading to return of the cheque by the concerned bank (Annexure R-2/3 in CRM-47185-2023).

20. The State's Counsel submits that earlier, when the petitioner realized that he was

not likely to get bail, he had also concocted a story of likely mediation and is delaying the petition after taking anticipatory bail in March 2023.

21. The analysis of all these arguments is as follows:

22. While deciding bail petitions, the courts neither indict nor absolve the accused and confine to the justification for pre-trial incarceration when the allegations are one-sided without any opportunity for the accused to rebuttal. Having been aware of the fatigue of facing prosecution is so cumbersome that it affects a person's liberty, which violates their fundamental right guaranteed under Article 21 of the Constitution of India, the Court performs a balancing act, balancing between the implications of crime before the communities, society at large, victim, victim's family, accused and their family, and the State. The petition is for anticipatory bail under Section 438 CrPC, and the parameters for anticipatory bail differ from regular bail. If this Court grants anticipatory bail to these visa thugs, it would send a wrong message to society, and it would lead to more such incidents of cheating innocent people.

23 Counsel for the State further opposed the bail on the ground that as on date 2 criminal cases of similar nature i.e., FIR bearing no. 117 dated 13.12.2011, Police Station Anandpur Sahib and FIR No.106 dated 09.09.2011.PS. Nangal, District Ropar and 7cases of cheque bounce under section 138 of Negotiable Instrument Act are pending against petitioner No.1, and in one of the above said cheque bounce case bearing no. CR/293/2015 he has admitted to pay Rs.35 lakhs to the concerned complainant, before the Ld. Court of Additional Sessions Judge Ludhiana, vide order dated 20.05.2015. Moreover, after the registration of the present case a complaint bearing UID number 32367, dated 21.09.2021, was registered against the petitioners, whereby, they duped the concerned complainant of Rs. 10 lakhs, using the same ulterior design of crime as used with the present complainant to send the person abroad. He further submits that the involvement of the petitioner No.1 with the travel agency business is writ large from his statement of accounts whereby, there are transactions amounting to rupees more than one crore with one company namely Amit Trading Company, which is dealing with travel business and is based in Ludhiana city (Annexure R-1 of Reply dated 04.05.2023). The fact that petitioner No.1 has kept two different PAN cards, as evidenced by his documents submitted as CIBIL (Annexure R-2 of the reply dated 04.05.2023), raises serious questions about his credibility and trustworthiness, which are crucial factors to consider when deciding on a bail application.

24. Considering each bail petition of the accused with a criminal history throws an onerous responsibility upon the courts to act judiciously and reasonably because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR, the prosecution stands withdrawn or the filed a closure report, cannot be included. For instance, if the accused was acquitted in a case of theft, that cannot be included in the criminal history. However, if the accused was convicted of assault, that should be included. Although crime is to be despised and not criminal, for a recidivist, the contours of a playing field are marshy, and the graver the criminal history, the slushier the puddles.

25. The petitioner's criminal history also does not entitle the petitioner to anticipatory bail.

26. Today, in this wired and connected globe, when access to almost every facility and every commodity is one click away, and the world is a global village, all eyes dream of a better, brighter, and more beautiful future. To actualize this dream of climbing up the social ladder and securing a more comfortable and prosperous lifestyle, people and especially based on ground realities, youth of Punjab, aim at crossing borders in hopes to find and explore untapped opportunities, that they believe are just waiting for them. This vision of finding greener pastures in an otherwise unseen land, based on the inspiring success stories of friends, relatives, and peers, many times leads to a desperate mindset that impulsively want to grab at any hands that extend to move them abroad. Deceitful visa thugs capitalize and take advantage of such optimistic hopes of ill-informed, desperately desirous people, entrapping people's trust and aspirations in the palm of their hands, extorting money under false assurances.

27. The allegations pertain to cheating on assuring visa under the garb of payment of money. Although the complainant also knew that they were paying money to get a Visa through illegal means, and undoubtedly, later on cried foul, it is just like the kettle calling the pot black, but a con cannot seek bail because of the victim's vulnerability. The sly way the petitioner conned, tricked, deceived, swindled, and defrauded the gullible complainant pointed out the dangerous trend of the revival of thugee. It is imperative that we sternly deal with this now, as if not, it might upsurge, revisiting history. The workings of such thugs need to be put to a stop, as these criminals are not

only playing with the lives of the victims of such cheating but are working against the development of society and making a mockery of simple public aspirations. Although the complainant knew they were paying to get a visa through illegal means, one can't disregard what is happening in the system.

28. The allegations against the petitioner are grave and serious. He took advantage of his previous bail orders and continued to indulge in criminal activities. In the present case there is sufficient prima facie evidence pointing towards his involvement.

29. In Sumitha Pradeep v Arun Kumar CK, 2022 SCC OnLine SC 1529, Supreme Court holds,

> [16]. … 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 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 anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

30. The allegations pertain to cheating the complainant on assuring visa under the garb of payment of money. Considering the severe nature of the allegations and the amount involved, the petitioner fails to make a case for bail.

31. Petition dismissed. Interim orders stand vacated. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

18.05.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: **YES**.