IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-42451-2024
Date of decision: 6th September, 2024

Raj Kaur and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sandeep Arora, Advocate for the petitioners.

Mr. A.S. Samra, AAG, Punjab.

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MANISHA BATRA, J (ORAL):-

The petitioners have made prayer for grant of anticipatory bail in case arising out of FIR No. 101 dated 19.07.2024 registered under Sections 420 and 120-B of IPC, 1860 at Police Station Division No.1, Police Commissionerate Jalandhar on the basis of complaint lodged by the complainant Priya Bali alleging therein that her husband and her herself came in contact with the petitioners who are husband and wife respectively, in the year 2019. By representing that they were travel agents and had settled many persons abroad and by inducing the complainant and her husband to get their family settled in Australia on permanent basis on investment visa, they made the complainant and her husband pay a sum of Rs. 1,10,00,000/- during the period from 2020 to 2022. This amount of money had been arranged by the complainant and her husband by taking loans from their friends, family members as well as from bank and from their own savings. However, after extracting the aforementioned amount from them, the petitioner and her husband did not arrange for any visa for the complainant and her family and kept on putting of the matter on one pretext or the other. Ultimately, realising that the petitioners had duped the complainant and her family of the aforementioned amount of money, she filed complaint making prayer for taking action in the matter.

2. After registration of FIR, investigation proceedings have been initiated and are underway. Apprehending their arrest, petitioners had moved an application for grant of pre-arrest bail before the Additional Sessions Judge, Jalandhar which was dismissed vide order dated 08.08.2024

3. Learned counsel for the petitioners contends that the inquiry conducted by the police authorities before registration of FIR clearly proved that neither any proof regarding making payment of cash amount of Rs. 1,10,00,000/- nor about any travel agency being run by the petitioners could be produced by the complainant. The inquiry report revealed that it was a case of monetary dealings between the parties qua sum of Rs. 14,00,000/- and was civil in nature. The complainant is pursuing her remedy before the Civil Court. The ingredients for commission of offence under Section 420 of IPC are not attracted. The complainant and her husband are educated persons and it cannot be presumed that they gave such amount of money as alleged by them to the petitioners without taking any receipt and by way of cash. The petitioners are ready to join the investigation. Their

custodial interrogation is not at all required. No useful purpose would be served by detaining them in custody. Therefore, it is argued that the petition deserves to be allowed.

4. Status report has been filed by respondent-State as per which on receipt of complaint Initially an inquiry was conducted by a police officer of the rank of Assistant Commissioner of Police, who submitted a report that there was evidence of transfer of an amount of Rs. 14,00,000/- from the account of complainant to the account of the petitioners but no evidence could be collected about their running any travel agency business or with regard to the cash payment of the amount of money as disclosed in the complaint. As per this report, there were monetary dealings between the complainant and the respondent and some civil litigation was also initiated. It is, however, argued by learned State counsel that keeping in view the nature of the allegations and for conducting thorough investigation in the matter by the police, custodial interrogation of the petitioners is required.

5. On the other hand, learned counsel for the complainant has vehemently argued that the petitioners with dishonest and fraudulent intention to cause wrongful loss, induced her husband and herself to part with a sum of Rs. 1,10,00,000/- on the pretext of settling them in Australia on investment visa while fully knowing that they could not do so. The allegations against them are serious and require deeper probe. The amount of money as taken by the petitioners thereby cheating the complainant and her husband is to be recovered from the petitioners for which their custodial interrogation is required. Therefore, it is urged that the petition does not

deserve to be allowed.

6. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

7. The petitioners are alleged to have induced the complainant and her husband to part with a sum of Rs. 1,10,00,000/- on the pretext of sending them to Australia on investment visa. During the course of inquiry, complainant has been able to show the transaction of amount of Rs. 14,00,000/- by way of transfer of the same in the account of the petitioners. However, no material has been collected with regard to the payment of the amount of Rs. 1,10,00,000/-. According to the prosecution this amount was given to the petitioners during the period from August 2020 till 2022. The complaint had been lodged on 06.04.2023 and FIR was registered on 19.07.2024. There is inordinate delay in reporting the matter to the police. The allegations qua payment of amount of Rs. 1,10,00,000/- have *prima facie* not been made out. Though, the petitioners have not been able to show as to what civil proceeding has been initiated by the complainant against them and it is also submitted by learned counsel for the complainant that no such proceeding is pending, however, keeping in view the nature of the allegations and the fact that no material has come on record to show that the petitioners were running any travel agency or they received any amount of money beyond the sum of Rs. 14,00,000/- from the complainant and her husband and since as per the inquiry report, it was a case of monetary dealings between the parties, it is debatable question as to whether the ingredients of Section 420 read with Section 120-B of IPC are attracted or

not. Moreso, as to whether, it was a case of inducement made on the pretext of sending the family of the complainant abroad. Moreso, the criminal proceedings are not for realisation of disputed dues. Process of criminal law is not akin to money recovery proceedings and cannot be utilized for arm twisting and money recovery especially while opposing the prayer for bail of observed in ***Ramesh Kumar Vs. State of NCT of Delhi, 2023 AIR (SC) 3484.*** Reliance can also be placed upon ***Dilip Singh v. State of Madhya Pradesh, (2021) 2 SCC 779***, wherein it was observed by Hon'ble Supreme Court that a criminal Court exercising jurisdiction to grant bail/anticipatory bail is not expected to act as a recovery agent to realise the dues of the complainant, that too without any trial.

8. In the peculiar circumstances of the case, it may be stated that custodial interrogation of the petitioners is not required. As such, in my considered opinion, it is fit case for extending benefit of pre-arrest bail to the petitioner. Accordingly, the petition is allowed and the petitioners are ordered to be extended benefit of anticipatory bail, subject to their surrender before the learned trial Court within a period of ten days from the date of passing of this order. On such surrender within that period, they shall be released on bail by the learned trial Court on furnishing bonds to its satisfaction. They shall also abide by the following conditions:-

(i) the petitioners shall co-operate with the investigation and shall appear before the investigating officer/arresting officer as and when required.

(ii) they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any Police Officer.

(iii) they shall not commit any similar offence while on bail.

9. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with law.

10. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

[MANISHA BATRA]
JUDGE

6th September, 2024
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No