

2024:PHHC:008642

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

110 **CRM-54198-2023 in/and**
CRM M-48979 of 2023
Date of Decision: 08.01.2024

Harish Gupta ...Petitioner
Vs.
State of Punjab and others ...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Atinderpal Singh, Advocate, for the
applicant/petitioner.

N.S.SHEKHAWAT, J. (Oral)

CRM-54198-2023

1. The applicant/petitioner has filed the present application with a prayer to recall the order dated 01.12.2023 passed by this Court, whereby, the case was dismissed for non-prosecution.
2. I have heard learned counsel for the applicant/petitioner and for the reasons mentioned in the application, the application is allowed and the main case is restored to its original number.

CRM M-48979 of 2023

1. The petitioner has filed the present petition under Section 439(2) Cr.P.C. read with Section 482 of the Cr.P.C. for cancellation of bail granted to respondents No. 4 and 5 by the Court of Sessions Judge, Jalandhar, vide order dated 31.08.2023 (Annexure P-3). A further prayer has also been made to direct the official respondents to

conduct fair and impartial investigation in case FIR No. 82 dated 12.06.2023 under Sections 420, 406 and 120-B IPC and Section 13 of the Punjab Travel Professionals (Regulation) Act, 2014 and Section 201 (added later on) registered at Police Station Division No. 7, District Jalandhar (Annexure P-1) and to recover the money of the petitioner from the respondents No. 4 and 5.

2. Learned counsel for the petitioner contends that in the present case FIR No. 82 dated 12.06.2023 (Annexure P-1) was got registered by the petitioner/complainant against respondents No. 4 and 5. As per the broad allegations levelled by the petitioner, respondents No. 4 and 5 had taken huge money from the petitioner for the purpose of obtaining visas and permanent residency for him and his wife. Respondents No. 4 and 5 had cheated the petitioner to the tune of Rs.40 lacs on the pretext of visa formalities and also in the name of business, which was started by the petitioner on the request of respondents No. 4 and 5, in which, the petitioner and private respondents were also partners.

3. The respondents No. 4 and 5 were ordered to be arrested in the present case on 31.07.2023. Vide order dated 31.08.2023 (Annexure P-3), the Court of Sessions Judge, Jalandhar, granted the bail to both the petitioners. Learned counsel submits that the private respondents had cheated the petitioner on the pretext of sending him abroad and a sum of Rs. 40 lacs was illegally taken by them, however, the Sessions Judge had completely overlooked the merits of the case.

Even after grant of concession of bail, the respondents No. 4 and 5 were continuously threatening the petitioner and were pressurizing the petitioner to compromise the matter.

4. I have considered the submissions made by the learned counsel for the petitioner and perused the record.

5. In the present case, the respondents No. 4 and 5 were charged with the offence under Sections 406, 420, 120-B IPC and Section 13 of Punjab Travel Professional (Regulation) Act (Annexure P-3) and all the offences were triable by the Court of Magistrate. Respondents No. 4 and 5 were ordered to be arrested in the present case on 31.07.2023 and vide impugned order dated 31.08.2023, the respondents No. 4 and 5 were ordered to be released on bail by the Court of Sessions Judge, Jalandhar and the following observations were made:-

“I have heard the learned counsel for the petitioners, learned Addl. Public Prosecutor for the State assisted by learned counsel for complainant and have also gone through the record of the case. The perusal of the FIR itself shows that the present complainant is admitting some partnership with the petitioners. It is the case of the petitioners that the complainant has ended his partnership vide writing dated 13.5.2022, which is signed by complainant, in which he has admitted that four cheques amounting to Rs.23,90,000/- are being given which were dishonoured and they have also filed five complaints under section 138 of Negotiable Instruments Act. It is further the case of petitioners that

the first cheque was dishonoured on 13.6.2022 and thereafter, as a counterblast to the said complaints, the present FIR was got registered. Though the learned counsel for complainant has submitted that the signatures of complainant on blank papers were misused by the petitioners, but the writing dated 13.5.2022 is duly attested by the Notary Public and this controversy can be adjudicated only during the trial of the case as to whether signatures were taken on blank paper or not. At this stage, learned counsel for complainant has not denied the signatures of complainant on writing dated 13.5.2022. The petitioners are in custody since 31.7.2023 and the case is triable by the court of Magistrate, which is not likely to be concluded soon. No useful purpose will be served by keeping the petitioners behind the bar. There is nothing on the record from which inference can be drawn that petitioners will abscond or tamper with the evidence. Thus, keeping in view above, without commenting on the merits of the case, both the petitioners are directed to be released on regular bail on their furnishing bail bonds in the sum of Rs.50,000/- with one surety in the like amount each, to the satisfaction of learned Illaqa Magistrate/Duty Magistrate”.

6. I have given anxious consideration to the above-referred observations made by the Sessions Judge, while granting the concession of bail to the respondents No. 4 and 5 and find that a well reasoned order has been recorded by the said Court. Even, the accused/respondents No. 4 and 5 had put-forth a version, which competes in probabilities with the case of the prosecution. Apart from

that, the Sessions Court had rightly observed that such a controversy could be adjudicated only during the course of trial and not in a bail application. Apart from that, the petitioner could not point out any illegality or perversity in the impugned order. Even, a vague averment has been made in the petition that the respondents No. 4 and 5 were continuously threatening the petitioner and had colluded with the higher police officers. Even no specific instance has been mentioned by the petitioner in the petition. Apart from that, it is settled law that the criminal prosecution can never be utilized by the petitioner/complainant as recovery proceedings. Apart from that, the cancellation of bail is harsh order and should not be passed in routine by this Court.

7. The petition sans merits and deserves to be dismissed by this Court.

8. Dismissed.

08.01.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

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