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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.50193 of 2024 (O&M)
Date of decision: 04.10.2024

Akshay Sharma ... Petitioner

Vs.

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Raghav Chadha, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

CRM-40353-2024

The application is allowed, as prayed for.

Main Case

1. Prayer in this petition has been made by the petitioner for grant of pre-arrest bail in case arising out of FIR No.170 dated 16.09.2024 registered under Sections 318 (4) and 61 (2) of the Bharatiya Nyaya Sanhita, 2023 (For short “BNS”) and Section 24 of Immigration Act at Police Station Division 5, District Police Commissionerate, Ludhiana.
2. As per the prosecution case, the Embassy of United States of America through one Mr. Eric C. Molitors Overseas Criminal

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Investigator through its Regional Security Office sent a written complaint to Director General of Police, Punjab alleging therein that two firms/companies namely, Red Leaf Immigration and Overseas Partner Education Consultants which were operating from the same address at Chandigarh were involved in fraudulent activities by submitting wrong information on U.S. Online visa applications to cheat U.S. Embassy in India and the Government of U.S.A., in order to obtain visas for United States of America. It was also informed that one case bearing FIR No.71 had been lodged by the Embassy at Police Station Chanakyapuri, Delhi on 21.05.2024 that had led to the arrest of its five agents and thereafter the aforementioned firms had sent applicants to the U.S. Consulates in Mumbai and Chennai. It was also alleged that on 06.06.2024 one Simran Thakur had applied for a non immigrant visa at U.S. Consulates in Mumbai by claiming that she had attended Swami Vivekanand University, Sagar in Madhya Pradesh but during the course of interview she admitted that she had never attended the above named university and had not been issued any Bachelor of Science degree and was educated only up to 12th grade. She disclosed that she had been given documents regarding higher education from one Karan, a representative of Red Leaf Immigration in Chandigarh in lieu of a sum of Rs.2 lakhs and her visa application and documents annexed along with the same were also submitted by the visa agent of Red Leaf Immigration. The complainant also cited the names of some more applicants who had applied for visas

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through the aforementioned companies/firms on the basis of false/forged documents. The complainant also mentioned the name of one Ramneet Kaur who too had applied for a non immigrant visa at U.S. Consulate in Chennai by claiming that she had earned a diploma in Business Administration from M/s Dellsys, Chandigarh. However, during interview, she admitted that she had never studied there and procured the diploma documents for a sum of Rs.50,000/-. Similar information had been given by one Rahul Kumar who too had applied for visa in U.S. and who disclosed that he had received educational certificates of Dellsys from Red Leaf Immigration for a sum of Rs.2 lakhs. Request was made for taking action in the matter.

3. On the basis of the complaint so lodged, the aforementioned FIR was registered. Investigation proceedings have been initiated and are underway. Apprehending his arrest, the petitioner who is Director of M/s Dellsys had filed an application for grant of pre arrest bail, which was dismissed by the Court of learned Additional Sessions Judge, Ludhiana vide order dated 01.10.2024.

4. It is argued by learned counsel for the petitioner that he is Director in M/s Dellsys which provides software to its clients and educate children in IT Sector. The allegations in the FIR are primarily against immigration consultancy firms namely, Red Leaf Immigration and Overseas Partner Education Consultants. He has been implicated as an accused in this case only on the allegation that M/s Red Leaf

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Immigration had submitted diplomas of two students namely, Ramneet Kaur and Rahul Kumar under the name of the company of the petitioner. No such diplomas had been issued by his company. Fake diplomas have been procured by the applicants Rahul Kumar and Ramneet Kaur. The employees of the immigration companies who had given these fake diplomas to the visa aspirants have not been nominated as accused. The petitioner never issued any such visa. He is cooperating with the investigating agencies. He has already handed over all the relevant documents concerning to the case to the investigating agency. The alleged incident of producing false documents had occurred at Chennai but FIR has been lodged at Ludhiana. No specific role has been attributed to him. The co-accused Kamaljit Kansal against whom there are serious allegations has since been extended benefit of regular bail. The petitioner has to look after his seriously ailing father. He has clean antecedents. He is ready to join the investigation. His custodial interrogation is not required. No recovery is to be effected from him. With these broad submissions, it is urged that he deserves to be extended benefit of pre arrest bail.

5. Learned State counsel has advance notice of the petition and is ready to argue the matter. It is submitted by him that the petitioner in connivance with the proprietors/owners of Red Leaf Immigration and Overseas Partner Education Consultants had been procuring false documents and showing false balances in the saving account holders to

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cheat embassy of U.S. and to gain wrongful profits from unemployed persons desirant of studying and settling abroad. The allegations against the petitioner are quite serious. His custodial interrogation is required to unearth the truth and to get details of the manner in which they have been defrauding public persons as well as embassy of U.S. No exceptional circumstance has even otherwise been made out to extend benefit of bail to the petitioner. Therefore, it is urged that the petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record.

7. The petitioner who is admittedly one of the Directors of M/s Dellsys company is alleged to have connived with the co-accused who are running visa consultancy firms/companies and is further alleged to have prepared false educational certificates in favour of visa aspirants for the purpose of issuing visas from U.S. Embassy by extracting huge amounts of money from them. The documents which were purported to be issued by the company of the petitioner and were used by the visa applicants for issuance of visas from U.S., have been found to be false. The complicity of the petitioner in commission of the subject offences is prima facie made out from the allegations in the FIR which are serious in nature. For the purpose of conducting thorough and proper investigation in the matter and eliciting information as to the manner in which the

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petitioner along with the co-accused had been manipulating issuance of false certificates, his custodial interrogation is must. Moreso, it is well settled proposition of law that arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. The powers of anticipatory bail are extra ordinary and the same are to be exercised sparingly in exceptional circumstances. The judicial discretion conferred upon the Court has to be properly exercised after application of mind as to the nature and gravity of the accusation, possibility of applicant fleeing from justice and other factors to decide whether it is a fit case for grant of anticipatory bail as such grant to some extent interferes in the sphere of investigation of an offence. The Court has also to see that an order of anticipatory bail should not operate as inroad in the normal legal procedure of criminal cases by the trial Court. The custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order of anticipatory bail. The Court must be circumspect while exercising such power for grant of anticipatory bail and it should not be granted as a matter of rule and has to be granted only when the Court is convinced that exceptional circumstances exist to resort to that extra ordinary remedy. In the present case, no such exceptional circumstances warranting exercise of the powers for grant of anticipatory bail by this Court are existing. As such, I am of the considered opinion that the petition does not deserve to be allowed.

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Accordingly, the same is dismissed.

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

04.10.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No