

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-57085-2022
Date of Decision: 13.03.2024

Kailash Rathore @ Sachin Rathore
..... Petitioner
Versus
State of Punjab
..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mohd. Arshad, Advocate
for the petitioner.
Mr. Ankit Grewal, DAG, Punjab.
Mr. Sunny K.Singla, Advocate
for the complainant.

HARSH BUNGER J. (ORAL)

1. Petitioner (Kailash Rathore @ Sachin Rathore) has filed the present petition under Section 438 of the Code of Criminal Procedure seeking grant of anticipatory bail in case bearing FIR No.84 dated 01.06.2022 (Annexure P-1), under Sections 120-B, 406 and 420 of the Indian Penal Code, registered at Police Station City Khanna, District Ludhiana.
2. Status report by way of affidavit dated 16.10.2023 of Mr. Rajesh Kumar, P.P.S., Deputy Superintendent of Police, Police District Khanna, District Ludhiana has been filed on behalf of State of Punjab, which is already on record.
3. Briefly, the aforesaid FIR has been registered on the complaint

of Ms. Deeksha Gupta W/o Rohit Gupta C/o Shri Radha Krishna Tour and Travels, Khanna against petitioner herein and his wife, namely Vandana Rathore. It is stated in the complaint that the complainant is in the business of selling Air Tickets and she came in contact with the accused persons on 16.11.2021 through an Accountant, namely Surinder Kansal. It is alleged that accused persons offered the complainant that they can provide cheap Air Tickets to her and gradually gained her faith and obtained her consent for doing the work of sale and purchase of Air Tickets with them. It is further alleged that the complainant deposited an amount of Rs.95,000/- in the accused persons' bank account No.346805500138 of the ICICI Bank; and similarly various deposits in cash or by way of transfer were made by the complainant into different bank accounts of accused persons. It is alleged that complainant's customers got booked four Air Tickets for Toronto by making a payment of Rs.4,90,000/-, which amount was got deposited by the complainant in the bank account of accused persons, for getting booked the aforesaid four Air Tickets for 06.12.2021; however, the accused persons did not arrange the said tickets and promised to return the amount to complainant; but subsequently, the accused persons resiled from their promise and thereafter on 08.12.2021, they also resiled from the other twenty two tickets, which were got booked by complainant during the earlier period. Accordingly, complainant alleged that the accused persons have committed a fraud of Rs.23,11,500/- with an intention to commit fraud, breach of trust and by counterfeiting with the complainant. It is further alleged that the aforementioned Air Tickets were even found to be fake; having no online record.

It is further stated in the complaint that when complainant tried to contact the accused persons then either they did not attend her phone calls

or if they attended the call then they used to hurl abuses, use derogatory language and threaten to kill her. It is next stated that even the e-mails sent to the accused persons have not been replied properly. Accordingly, the complaint was filed and the aforesaid FIR (Annexure P-1) was registered against the petitioner herein and his wife (Vandana Rathore).

4. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case by giving a criminal colour to a purely civil dispute. It is submitted that petitioner is running a business under the title of 'Holiday Destination' at Gurgaon, which is in the name of his wife – Vandana Rathore, but is being run by petitioner himself. It is stated that petitioner came in contact with the complainant in November, 2021, at the instance of Surinder Kansal; and the complainant had shown her interest to work with petitioner on commission basis for the booking of Air Tickets. It is contended that complainant had got several Air Tickets booked from the petitioner during the course of business and only the non-transferable/non-refundable Air Tickets, being the cheapest; were opted by the complainant and her clients. Learned counsel submits that complainant had asked the petitioner to cancel the non-refundable tickets on flimsy grounds, which were not accepted by the Airlines, and despite knowing that the tickets were non-refundable, complainant kept on demanding full refund from the petitioner. It is submitted that when petitioner showed his inability to give full refund to the complainant then she got registered the aforesaid FIR (Annexure P-1) against him and his wife (Vandana Rathore).

Learned counsel for the petitioner contends that complainant had given an approximate amount of Rs.22.5 Lacs through nearly fourteen transactions to the petitioner for booking the non-refundable Air Tickets to

different destinations for her clients; and due to the tickets being non-refundable in nature, the complainant was not entitled to any refund upon cancellation of the same; however, petitioner took up the matter with different Airlines and managed to get a refund of Rs.9,14,000/-; and he was also willing to pay the said amount to the complainant.

Learned counsel for the petitioner submits that petitioner has already paid an amount of Rs.9,00,000/- to the complainant during pendency of these proceedings and another sum of Rs.50,000/- has also been paid to her during pendency of the anticipatory bail petition of the co-accused, i.e. wife of petitioner (Vandana Rathore). It is further submitted that in pursuance of interim bail granted to the petitioner by this Court vide order dated 05.09.2023, he has already joined the investigation and nothing is to be recovered from him; and accordingly, it is prayed that the said interim bail be confirmed.

5. Per contra, learned State counsel and learned counsel for the complainant have opposed the aforesaid prayer made on behalf of petitioner.

6. Learned counsel for the complainant submits that during pendency of the anticipatory bail petition of petitioner's wife, namely Vandana Rathore, the matter was referred to the Mediation and Conciliation Centre of this Court, whereunder a settlement/compromise had been effected between the complainant and Vandana Rathore (wife of petitioner herein) on 13.07.2022. A copy thereof is handed over by learned counsel for the complainant, in Court today, which is taken on record, subject to all just exceptions.

While referring to the terms and conditions of the aforesaid settlement/compromise dated 13.07.2022, learned counsel for the complainant submits that the compromise was arrived at not only on behalf

of petitioner's wife (Vandana Rathore) but also on behalf of her family members, which includes the petitioner herein; however, the petitioner and his wife (Vandana Rathore) have resiled from the said settlement/compromise and have not made any further payment to the complainant, apart from Rs.9,50,000/-, as mentioned above. Accordingly, it is prayed that the present petition may be dismissed.

7. At this stage, a pointed query was raised to learned counsel for the petitioner that as to when the balance amount of Rs.10,50,000/-, out of the total settled amount of Rs.20,00,000/-, would be paid to the complainant, whereupon, he sought for a pass-over for getting the necessary instructions; and when the matter was taken up on the second call, learned counsel for the petitioner submitted that petitioner is not ready to make the payment of balance amount in terms of settlement/compromise dated 13.07.2022. Learned counsel for the petitioner went on to submit that petitioner's wife is barely educated; is a housewife; and is not aware of the intricacies of business. Learned counsel further submitted that since the entire dispute is of civil nature, accordingly the complainant can avail her remedies before the Civil Court to seek recovery of the amount (if any); and further prayed for affirming the interim bail granted to petitioner vide order dated 05.09.2023.

8. I have heard learned counsel for the parties and gone through the paper book with their able assistance.

9. It is not disputed that petitioner had received an amount of Rs.22.5 Lacs from the complainant for the purpose of booking Air Tickets of her clients. It is also not disputed that wife of petitioner (Vandana Rathore) has entered into a settlement/compromise before the Mediation and Conciliation Centre of this Court on 13.07.2022.

It would be apparent from a perusal of the terms and conditions

of the said compromise that the same was not only effected on behalf of Vandana Rathore (wife of petitioner) but also on behalf of petitioner and other family members. The terms and conditions of the aforesaid Settlement/Compromise dated 13.07.2022 read as under:-

“7. That both the parties have decided to compromise the matter on the following terms and conditions:-

a) That both the parties have agreed that the first party/petitioner shall pay a total sum of Rs.20,00,000/- (Rupees Twenty Lacs only) to the second party/complainant as full and final payment towards the settlement of the present dispute. The above-said amount of Rs.20,00,000/- (Rupees Twenty Lacs only) shall be paid in the following manner/instalments:-

(i) The first instalment of Rs.6,00,000/- (Rupees Six Lacs only) shall be paid by the first party/petitioner to the second party/complainant through RTGS or Demand Draft on or before 14.07.2022.

(ii) The second instalment of Rs.4,00,000/- (Rupees Four Lacs only) shall be paid by the first party/petitioner to the second party/complainant through RTGS or Demand Draft on or before 07.08.2022.

(iii) The third instalment of Rs.2,50,000/- (Rupees Two Lacs and Fifty Thousand only) shall be paid by the first party/petitioner to the second party/complainant through RTGS or Demand Draft on or before 15.09.2022.

(iv) The fourth instalment of Rs.2,50,000/- (Rupees Two Lacs and Fifty Thousand only) shall be paid by the first party/petitioner to the second party/complainant through RTGS or Demand Draft on or before 15.10.2022.

(v) The fifth instalment of Rs.2,50,000/- (Rupees Two Lacs and Fifty Thousand only) shall be paid by the first party/petitioner to the second party/complainant through RTGS or Demand Draft on or before 15.11.2022.

(vi) The sixth and final instalment of Rs.2,50,000/-

- (Rupees Two Lacs and Fifty Thousand only) shall be paid by the first party/petitioner to the second party/complainant through RTGS or Demand Draft on or before 15.12.2022.*
- b) It is agreed between the parties that the second party/complainant shall have no objection, if the interim bail granted to the petitioner/first party by this Hon'ble High Court is continued.*
- c) It is further agreed between the parties that after the receipt of first two instalments, the second party shall have no objection if the interim anticipatory bail of the husband of the petitioner, who is co-accused in the present FIR is granted, as and when it applies for the same before the appropriate Hon'ble Court.*
- d) That it is further agreed between the parties that after receipt of the full and final amount as mentioned, the second party-Deeksha Gupta shall have no objection if the aforesaid FIR is quashed by the Hon'ble Court against the petitioner/first party and his family members. The petitioner/first party and his family members shall take further necessary steps for quashing of the FIR in accordance with law. The second party-Deeksha Gupta shall fully co-operate with the petitioner/first party and his family members for getting the said FIR quashed and shall make statement/file affidavit, if required.*
- e) That both the parties shall withdraw all the Civil and Criminal cases pending between them, if any, in any Court of Law/Authority.”*

A perusal of the aforesaid terms and conditions would leave no manner of doubt that settlement/compromise dated 13.07.2022 was to the benefit of petitioner herein, as well; and now, the petitioner is backing out from the said settlement, which apparently shows his conduct.

10. The conduct of petitioner would also be evident from paragraph

No.6 of the instant petition, wherein the following stand has been taken by

him:-

*“6. That the wife of the petitioner filed an application for grant of anticipatory bail before this Hon’ble Court vide CRM-M No.27880 of 2022 titled Vandana Rathore Vs. State of Punjab. The Hon’ble Court was kind enough to grant interim protection and refer the matter to the mediation. The wife of the petitioner being a barely educated housewife and indifferent towards the intricacies of business and did not know much about the disputed amount and the deductions on account of the cancellations. Though the parties had reached an agreement but the instant petitioner had disagreed with the same as his wife did not know about the accounts and he could not sit in the mediation as he was not on bail and could have been arrested. Eventually the above said application for anticipatory bail CRM-M No.27880 of 2022 titled Vandana Rathore Vs. State of Punjab was withdrawn with the liberty to file afresh with better particulars. Copy of the order dated 22.11.2022 is attached as **Annexure P-4.**”*

11. Once a compromise/settlement has been arrived at between the wife of petitioner and the complainant, which was also to the benefit of petitioner; and pursuant thereto, a part payment of Rs.9,50,000/- out of total settled amount of Rs.20,00,000/-, already been made to the complainant; the petitioner, at this stage, cannot be permitted to back out from the said compromise and take a stance that complainant can avail her civil remedies to seek recovery of the amount.

12. It is well settled that a litigant should approach the Court not only with clean hands but also with clean mind and heart. The Courts are required to do substantial justice and not to let offenders go scot-free on the pretext of such pleas.

13. Furthermore, pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the

innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

14. Serious allegations of cheating have been made against the petitioner and in my considered view, custodial interrogation in this case is found to be necessary for complete and effective investigation.

15. In *State represented by the C.B.I. versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble the Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail.

16. Keeping in view the above facts and circumstances, the petitioner in the present case is not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 of the Code of Criminal Procedure seeking grant of anticipatory bail to the petitioner in case FIR No.84 dated 01.06.2022 (Annexure P-1), under Sections 120-B, 406 and 420 of the Indian Penal Code, registered at Police Station City Khanna, District Ludhiana; is dismissed.

17. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

18. All pending application(s), if any, shall also stand closed.

13.03.2024

Apurva

(HARSH BUNGER)
JUDGE

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