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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

102+209 CRM-43725-2024 in/and
CRM-M-51412-2024
Date of decision: 8th November, 2024

Ashwani Kumar @ Ashni Kumar and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. A.S. Gill, Advocate for the petitioners.

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

Mr Rajeev K. Kapila, Advocate for the complainant.

MANISHA BATRA, J (ORAL):-

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This application has been filed by the complainant for placing on record reply and exemption from filing certified/type copies of annexures.

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. Annexures C-1 to C-4 are ordered to be taken on record.

Main case

The present petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking



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anticipatory bail in the FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
52	21.08.2024	Bholath, District Kapurthala	420 and 406 of IPC, 1860 and (Now Sections 316(2), 318(4) and 61(2) of Bharatiya Nyaya Sanhita, 2023 (for short ‘BNS’) Section 13 of Punjab Travel Professional (Regulations) Act, 2014

2. Adumbrated facts as emanating from the record are that the aforementioned FIR was registered on the basis of complaint lodged by complainant Bobby Chand alleging therein that petitioner No.2 Rajni who was residing in his neighbourhood had disclosed to him that her brother Jinder Kumar used to send people abroad and allured him by representing that his son Sagar could also be sent abroad through her brother. Upon being so induced, the complainant decided to send Sagar to Europe through the accused Jinder Kumar. The complainant met accused Jinder Kumar in the house of petitioners in October, 2023 who assured safe abode of Sagar to Finland, Europe. He demanded a sum of Rs. 14,00,000/- for this purpose. He received a sum of Rs. 20,000/- as advance and took passport of the son of the complainant. Sometime thereafter, he told the complainant that he would arrange for sending his son firstly to Russia and then to Finland. His son was sent to Russia on the basis of documents provided by Jinder Kumar on 06.01.2024. On his reaching Russia, the accused Jinder Kumar raised a demand of Rs. 7,00,000/- on the pretext of arranging a flight for his son for going to Finland. The petitioners collected a sum of Rs. 3,00,000/- in cash from the complainant and a sum of Rs. 4,00,000/- was transferred by the



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complainant in the bank account of accused Jinder Kumar. The son of the complainant was sent through dunky route to Belarus from Russia and was made to stay there for two months and then he was sent to Germany. The complainant had last conversation with his son on 27.02.2024 and thereafter, lost contact with him. On approaching the accused Jinder Kumar, he disclosed that his son had been nabbed by Latvian Army and would be brought back by travel agent-Gaurav. However, he kept on putting off the matter on one pretext or the other. In May, 2024, the complainant received a call from the police station Bholath regarding verification of some dead body. He also received a message that his son was no more. Apprehending that some untoward incident had taken place with his son, he approached the petitioners and accused Jinder but they kept on putting off the matter on one pretext or the other. As such, he prayed for taking action in the matter.

3. After registration of FIR, investigation proceedings have been initiated and are underway. The accused Jinder Kumar has been arrested. Apprehending their arrest, the petitioners moved application for grant of anticipatory bail which has been dismissed by the Court of learned Additional Sessions Judge, Kapurthala vide order dated 07.10.2024.

4. It is argued by learned counsel for the petitioners that they have been falsely implicated in this case only because of the fact that they are related to the accused Jinder. They never received any amount of money from the complainant nor any inducement had been made by them to send the son of the complainant abroad. The matter had been inquired into by the police before the registration of FIR and as per the inquiry report, only



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accused Jinder Kumar @ Rajinder and Gaurav Kumar were found involved in the occurrence. The petitioners are running their own business and have nothing to do with the business of sending people abroad. The subject offences have not been made out against them. Their custodial interrogation is not required. Neither any recovery is to be effected from them. They are ready to join the investigation. Therefore, it is urged that the petition deserves to be allowed.

5. Status report has been filed by the respondent-State. It is submitted therein and learned State counsel assisted by learned counsel for the complainant has argued that there are serious allegations against the petitioners who in connivance with co-accused Jinder Kumar induced the complainant to part with a huge amount of money on the pretext of sending his son to Europe. They had sent the son of the complainant by illegal manner to Russia. During the course of investigation, it has been revealed that dead body of the son of the complainant had been found on 29.02.2024. The DNA sample of the complainant has been sent for matching the same with the DNA sample of the dead body. FSL report is awaited. Petitioner No.2 received a sum of Rs. 3,00,000/- from the complainant. It was on her allurements that the complainant had met the accused Jinder Kumar and had been induced to send his son. The complainant has been duped of huge amount of money. The matter requires thorough investigation. 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



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carefully.

7. As per the allegations, the petitioners in conspiracy with the co-accused Jinder Kumar had induced the complainant to part with a huge amount of money on the pretext of sending his son to Europe through Russia and had sent his son to Russia through illegal route by alluring the complainant to get him settled in Europe. On daily basis, one hears instances of such like innocent persons being defrauded and cheated by unscrupulous persons on being allured for sending their wards abroad. The complainant has not been even in contact with his son and as per the respondent-State, information about his death on 29.02.2024 has been received, though it is yet to be confirmed that the dead body as received was of the son of the complainant. The petitioners had collected money from the complainant on the pretext of giving the same to accused Jinder Kumar. Though during the course of inquiry, two persons namely Gaurav Kumar and Jinder Kumar were found to be involved in commission of subject offences, however, on conducting further investigation, the complicity of the petitioners in the subject crime has been *prima facie* made out. For conducting thorough investigation in the matter, the custodial interrogation of the petitioner is must. 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 for several other purposes also. The powers of anticipatory bail are extraordinary 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



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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 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. Accordingly, the same is dismissed.

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

9. Since the main petition has been dismissed, pending application if any is rendered infructuous.

[MANISHA BATRA]
JUDGE

8th November, 2024

Parveen Sharma

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