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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 15.02.2024

(1) CRM-M-56266-2023 (O & M)

Bikram Jeet Singh Petitioner

V/s

State of Haryana ...Respondent

(2) CRM-M-48917-2023 (O & M)

Surinder Mehla Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Pushp Jain, Advocate, (in CRM-M-56266-2023)
and Mr. Sandeep Arora, Advocate (in CRM-M-48917-2023),
for the petitioner(s).

Mr. Pawan Kumar, Jhanda, DAG, Haryana.

Mr. Bhupinder Singh, Advocate, for the complainant.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of two criminal miscellaneous petitions
i.e. CRM-M-56266-2023 and CRM-M-48917-2023 as they arise out of the
same FIR.

2. The petitioner-Bikram Jeet Singh (in CRM-M-56266-2023) and
the petitioner-Surinder Mehla (in CRM-M-48917-2023) seek the grant of

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anticipatory bail under Section 438 Cr.P.C. in case bearing FIR No.393 dated 09.08.2023 under Sections 120-B, 406 and 420 IPC registered at Police Station Baldev Nagar, District Ambala.

3. For the sake of convenience, the facts are being taken from the petition bearing No. CRM-M-56266-2023.

4. The present FIR came to be registered at the instance of Davinder Singh son of Apinder Singh and reads as under:-

“FIR No.393 dated 09.08.2023, under Sections 120-8,406,420 of Indian Penal Code 1860, Police Station Baldev Nagar, District Ambala.

Respected Sir, a complaint No. 4-SIT-K dated 08.06.2023 through post from the office of Superintendent of Police, Ambala received at Police station. The copy of complaint received is as follows; To, Superintendent of Police, Ambala, Subject:- complaint against accused No.1) Surender Mehla (Phone Number 98964-44455) resident of Fusgarh Karnal and No.2) Asha Devi wife of Surender Mehla, resident of Fusgarh, Karnal for committing cheatings and fraud. Sir, it is submitted that I am the applicant Davinder Singh son of Sardara Apinder Singh, resident of Village Ranjit Nagar, Gondar, Sub Tehsil Nissing, District Karnal, Haryana. My maternal nephew Harpreet Singh son of Gurbakh Singh, resident of Rahon, Tehsil Nawan Shaher Shaheed Bhagat Singh Nagar, Punjab, wanted to go abroad. I talked to Surender Mahla and his wife Asha Rani about sending my nephew Harpreet Singh abroad, they told me "Sending people abroad, this is the work we do here and we will send Harpreet Singh abroad(America). On day, Surender Mehla and his friends came to my house at village

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Ranjit Nagar, Gondar. At that time, Harpreet Singh was also at my house and they talked about sending Harpreet Singh abroad for Rs.27,00,000/- and said that we will have to pay only when Harpreet Singh reaches Mexico. After our conversation, Surender Mehla asked me for Harpreet Singh's passport and took away passport alongwith some documents as guarantee. After a few days, Surender Mehla and his associates took my nephew to Kenya. They kept my nephew there for a few days and then Surender Mehla and his associates demanded Rs.7,50,000/-. After putting pressure upon me, they took Rs.7,50,000/-in cash from me and Surender Mehla after signing, issued one cheque to me. After Surender Mehla took Rs.7,50,000/-, he took me with him to Ambala, and there he made me to meet Vikram resident of Dinanagar, Gurdaspur, Punjab in a hotel and at that time, I had also made his video which is with me. Surender Mehla gave Rs.7,50,000/- to Vikram and said that now the full responsibility of sending Harpreet Singh abroad(America) lies with them i.e. Surender Mehla and Vikram. After a few days, Surender Mehla and his associates again demanded more money. This time, when I refused to give money to them, Surender Mehla's wife Asha Devi talked to me on phone and told me to trust them and give Rs.1,50,000/- and said that your money would be safe. After this, at the request of Asha Devi, I deposited Rs.1,50,000/- in the bank account of her husband Surender Mehla, thus, Surender Mehla had received Rs.9,00,000/- from me. After this, on April 2022, Surender Mehla and his associates sent my nephew Harpreet Singh back to India and told me that they cannot send Harpreet Singh to America. After this incident, I asked Surender Mehla to return back my money of Rs.9,00,000/- and whenever I asked for my money from Surender Mehla, he used to tell me that he will

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return the money within two-three days. At that time, he played a recording and told me that your money is lying with this person and as and when he will return it, then I will return it to you. The voice heard in the recording was that of Vikram (Phone No.90234-20000) resident of Village Dinanagar, Vikram's wife and Vikram resident of Chandigarh, Ranjot Singh (Phone No.7717532856) and his father Parmi Singh (Phone Number 91529-20000) son Davinder Singh, resident of Flat No.60, Tower No.3, Homeland Height, Sector 70, Mohali, Punjab. It's been almost a year since then and now, when I demanded my money back from Surender Singh, Surender Mehla and his associates used to abuse me and tell me that they will not give me the money and if you will go to the police and lodge any complaint against them, they will kill me. I am a peace loving person and believe in law and now I want to file a case of cheating and fraud against the said culprits so that I can get my money back with the help of law and appropriate legal action can be taken against the culprits. Therefore, it is requested that legal action should be taken against the said culprits and justice be given to me. I shall be thankful to you. Thanks. Date 8.6.2023. Sd/- Davinder Singh applicant”.

5. The learned counsel for the petitioner-Bikram Jeet Singh (in CRM-M-56266-2023) contends that the petitioner had been falsely implicated in the present case. The only allegation against him is that he had been introduced to the complainant by a co-accused/Surender Mehla who had taken advance of Rs.1,50,000/- from the complainant and due to non-payment of the same, the present FIR had been registered. There was no

evidence as to how and when a sum of Rs.7,50,000/- had been paid in cash

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to the petitioner. As the petitioner was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

6. The learned counsel for the petitioner-Surinder Mehla @ Surender Mehla (in CRM-M-48917-2023) contends that the petitioner had been falsely implicated in the present case. In fact, the petitioner had taken a loan of Rs.1,50,000/- and on account of non-payment of the same, the complainant had implicated him. The dispute was purely civil in nature and had been found to be so in earlier police enquiries. As the petitioner had joined the investigation and had co-operated with the same, he was entitled to the concession of bail.

7. The learned counsel for the State alongwith the counsel for the complainant, on the other hand, contend that both the petitioners had cheated the complainant of a huge amount of money with the promise to send the nephew of the complainant, namely, Harpreet Singh abroad. There were audio recordings of the petitioners admitting that they had received the money and were going to refund the same. In fact, a cheque had been issued by the petitioner-Surinder Mehla @ Surender Mehla (in CRM-M-48917-2023) in favour of the complainant which had been dishonoured. So far as the petitioner-Bikram Jeet Singh (in CRM-M-56266-2023) was concerned, he was an accused in four other cases of a similar nature arising out of FIR No.29 dated 30.03.2023 under Sections 406, 420/120-B IPC, Section 13 of the Punjab Prevention of Human Smuggling Act, 2012, Police Station Dakoli, District SAS Nagar, FIR No.134 dated 18.08.2022 under Sections

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406/420 IPC, Section 13 of the Immigration Act, 1983, Police Station Mukerian, District Hoshiarpur, FIR No.04 dated 07.04.2020 under Section 420 IPC, Police Station Bhaini Mian Khan, District Gurdaspur and FIR No.01 dated 02.01.2020 under Sections 406/420 IPC and Section 13 of the Immigration Act, 1983, Police Station Dehlon, District Ludhiana. As the offence against the petitioners was *prima facie* established and the investigation was to be taken to its logical conclusion, they were not entitled to the concession of anticipatory bail.

8. I have heard the learned counsel for the parties.

9. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***', has held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

"It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

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We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

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10. A perusal of the FIR would reveal that both the petitioners received a huge amount of money from the complainant with the assurance that they would send his nephew-Harpreet Singh abroad. There are video/audio recordings of an admission being made by the petitioners to this effect. Surinder Mehla @ Surender Mehla (petitioner-in CRM-M-48917-2023) had even issued a cheque in favour of the complainant which came to be dishonoured. Bikram Jeet Singh (petitioner in CRM-M-56266-2023), on the other hand, has criminal antecedents with four other cases of a similar nature registered against him. Therefore, as the offence stands *prima facie* established and the investigation is to be taken to its logical conclusion, the petitioners do not deserve the concession of anticipatory bail.

11. In view of the above discussion, I do not find any merit in the present petitions. Therefore, the same stand dismissed.

12. The interim order dated 11.12.2023 passed in CRM-M-48917-2023 stands vacated.

13. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

February 15, 2024
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

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