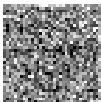


2024:PHHC:158/122



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

1. CRM-M-57430-2023
Date of Decision-28.08.2024

BALMUKAND TIWARI

....PETITIONER

VERSUS

STATE OF PUNJAB

....RESPONDENT

2. CRM-M-14617-2024

HARNEK PAL

....PETITIONER

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Prateek Pandit, Advocate &
Mr. Nitin Rampal, Advocate for the petitioners

Mr. J.S. Rattu, DAG, Punjab

Ms. Mehak Bedi, Advocate for
Mr. Vivek K. Thakur, Advocate for the complainant.

SANDEEP MOUDGIL, J

1. By this common order, this Court is going to dispose of two petitions, as the same involve common prayer for grant of anticipatory bail under Section 438 Cr.P.C. in one and same FIR, i.e., FIR No.203 dated 25.07.2023 under Section 406, 420 of the Indian Penal Code and Section 13 of

the Punjab Travel Professionals Regulation Act, 2014, registered at Police Station City Kapurthala, District Kapurthala. However, for brevity the facts are being taken from CRM-M-57430-2023 to pass this common order.

2. It is contended by learned counsel for the petitioner that the petitioner has been falsely implicated in the present case wherein he is only a priest by profession and due to his profession, lots of people visit him to discuss their problems and solutions thereof. Harnek and the complainant being follower of the petitioner expressed his desire to send his sister abroad and the petitioner conveyed this to Harnek in this regard, who conveyed the complainant, through the petitioner, that he will charge Rs.17.00 lacs for the job done.

3. He further contends that as such, the petitioner is in no way connected with the transactions which stands supported by an affidavit sworn by Harnek Singh, (Annexure P-3), that he had taken the amount from the complainant and given to a person named Gagandeep Khosla @ Jimmy. It is also contended by the learned counsel for the petitioner that Asha Tiwari, the wife of the petitioner, has also been made accused in this case although she has nothing to do with this case. During the course of hearing of her bail application – CRM-M-48288 of 2023, in order to show their bona fide, a statement was made that she is ready to refund Rs.5.00 lacs to the complainant subject to the outcome of the case and this Hon'ble Court was pleased to grant ad-interim bail to the wife of the petitioner, vide order dated 31.10.2023, (Annexure P-4) wherein on 6.11.2023, an amount of Rs.5.00 lacs stands returned to the complainant vide DD No.510864 dated 4.11.2023 whereupon the order of interim bail was made absolute by this Hon'ble Court.

4. It has been contended by the learned counsel for the petitioner – Harnek Pal (in CRM-M-14617-2024) that the petitioner has been falsely implicated in the present case. It is further contended that there is no allegation of entrustment to the petitioner by the complainant. No amount has been paid to the petitioner nor any amount has been deposited in the account of the petitioner. The allegation against the petitioner is that he had accompanied Bal Mukand Tiwari to the house of the complainant.

5. Learned counsel for the State, referring to the reply filed on behalf of the State, has contended that the petitioners are guilty of committing the offence under Section 420, 406 IPC and Section 13 of the PTPR Act, 2014. The petitioner and his wife had visited the house of the complainant to apprise him about the date of appointment of his sister for Visa wherein on the date of appointment, one person met the complainant and told that he is having links in the Embassy and will get the work done. Further, accused also gave him pamphlet of Naya Bharat Mahotsav, Co-fashion House Letter Head and visiting card and produced Daljit Kaur in that Center and all the documents of Daljit Kaur were got deposited there. Thereafter, petitioner told the complainant on 01.09.2022, that Visa has been granted to Daljit Kaur and also sent a copy of the Visa on WhatsApp and thereafter, all the accused took an amount of Rs.10.00 lacs before Gurcharan Singh and Sukhwinder Singh. In order to purchase flight tickets, complainant was asked to arrange for the balance amount. The accused sent new Ticket of Turkish Airlines for 02.10.2022, as the tickets purchased earlier were cancelled twice. But on 02.10.2022, when complainant went alongwith Daljit Kaur at Delhi and the accused was already present at the Delhi Airport. When Daljit Kaur entered

the Airport and presented her ticket to the Airport officials, they told that the ticket is incomplete and did not allow the complainant's sister to fly. When accused was countered with the situation, he assured that new ticket will be arranged in few days but thereafter, kept on delaying the matter on one pretext or the other therefore the specific allegations against the petitioner and the co accused of duping the complainant cannot be ignored therefore the present petition is liable to be dismissed.

6. As regards the petition of petitioner – Harnek Pal, the learned State counsel has submitted that the role of the petitioner is similar to that of the co-accused Bal Mukand Tiwari because he has also visited the house of the complainant for collecting money from the complainant. According to the complainant, the present petitioner had settled the deal at Rs.17.00 lacs and the petitioner has sworn an affidavit, which is part of bail petition of co-accused Bal Mukand Tiwari (Annexure P-3), that he had passed on the amount to one person named Gagandeep Khosla @ Jimmy. As such, the present petitioner has admitted his own guilt by swearing such affidavit and accordingly, his bail application is liable to be dismissed.

7. On the other hand, learned counsel for the complainant has referred to the Mediation Report dated 18.07.2024, and contended that the petitioners were referred to the Mediation Centre by this Hon'ble Court for settlement but their absence before the Mediation and Conciliation Centre of this Hon'ble Court speaks volume that they are not interested in settlement, therefore, their bail applications are liable to be dismissed.

8. Heard learned counsel for the respective parties at length and gone through the record.

9. Perusal of the case files reveal that vide order dated 21.11.2023, petitioner – Bal Mukand Tiwari was granted interim bail to join investigation and parties were relegated to the Mediation & Conciliation Centre of this Court to explore the possibility of settlement and were again relegated to the Mediation Centre vide order dated 30.04.2024.

10. The petitioner – Harnek Pal was also granted interim bail, vide order dated 20.03.2024, to join investigation and parties were relegated to the Mediation & Conciliation Centre of this Court to explore the possibility of settlement and were again relegated to the Mediation Centre vide order dated 21.03.2024.

11. Now, after perusal of mediation proceedings on record, it can be seen that the Mediator – Mr. Saurabh Arora has reported on 06.06.2024 that Mediation Session held with the parties and matter is adjourned to 02.07.2024. On 02.07.2024, petitioners came present but complainant was not present and the proceedings were deferred for 18.07.2024. On 18.07.2024, complainant came present but petitioners did not. As such, matter was ordered to be listed on 25.07.2024 before this Court as the date fixed before this Court was 25.07.2024. However, the proceedings/order says that “Despite best efforts on previous dates, the parties could not reach at any amicable settlement”.

12. Today, this case is listed before this Bench.

13. The mediation process involving criminal disputes, albeit, is no more in its infancy in India. However, considering the problems that arise in such disputes, it is still evolving and trying to grapple with new problems which may arise on several grounds. While there can be no fixed pattern for preparing an agreement or a performa to fill in for the purpose of affecting a

settlement before a mediator, the mediators dealing should keep in mind that such agreements are reached with an intent to attain finality to all the disputes. While the Mediator performs the duty of not only dealing with those tempers but also their disagreements and emotions, the mediator also has another responsibility to ensure that the agreement reached by the parties, as well as the hard work of the parties, their families, counsels and the Mediator, is crystalised. It is unfortunate to note that these attempts fail in a large number of cases, and the parties find themselves in conflict once again due to flaws or ambiguities in the settlement agreements.

14. In “*Shakuntala Sawhney v Kaushalya Sawhney, (1979) 3 SCR 639*,” the Hon’ble Supreme Court observed that the finest hour of Justice arises propitiously when parties, who fell apart, bury the hatchet and weave a sense of fellowship or reunion

15. As it is clear from the report of Mediator of the Mediation and Conciliation Centre of this Court that despite best efforts, parties could not reach at any amicable settlement. It will be relevant to add here that the petitioners were granted interim bail in order to explore the possibility of settlement but as there is no chance of amicable settlement, the purpose of granting interim bail to the petitioners has been defeated by the petitioners themselves. Resultantly, it will be in the fitness of things that the interim bail orders of the petitioners are withdrawn and they be subjected to interrogation/investigation in this case after causing their arrest by the police authorities.

16. Hence, the interim bail orders of the petitioners namely Bal Mukand Tiwari and Harnek Pal, dated 21.11.2023 read with order dated

30.04.2024 and 20.03.2024 read with order dated 21.03.2024 & 30.04.2024, respectively, are hereby withdrawn and the instant petitions seeking anticipatory bail to the petitioners named above, in the case arising out of FIR No.203 dated 25.07.2023 under Section 406, 420 of the Indian Penal Code and Section 13 of the Punjab Travel Professionals Regulation Act, 2014, registered at Police Station City Kapurthala, District Kapurthala, are hereby ordered to be dismissed.

17. State to take follow up action in the matter in accordance with law, after withdrawal of interim bail orders and dismissal of these petitions for grant of anticipatory bail to the petitioners.

28.08.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>