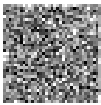


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2024:PHHC:154480



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58339-2024
DECIDED ON: 22.11.2024

MOHAMMAD SHAHID

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sunny K. Singla, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

Mr. Harpinder Singh, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 482 of BNSS, 2023 for grant of anticipatory bail to the petitioner in FIR No.24, dated 21.09.2024, under Sections 316(2), 318(4) of BNS, 2023 and Section 24 of Immigration Act, 1983, registered at Police Station PS NRI, District Jalandhar Rural.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Complaint UID No.2408663 dated 09.08.2024 was given by Gurdip Singh son of Harbans Singh resident of

VPO Bhogpur, District Jalandhar to the office of Additional Director General of Police, NRI Wing, Punjab, Phase-7, SAS Nagar, the contents of which are To, Hon'ble ADGP Sahib, NRI Wing, Punjab, Jalandhar. Subject: Complaint against 1. Agent Imran Khan son of Shahid Khan (Mobile No.79861-39411) and 2. Shahid Khan son of not known (Mobile No.8-98723-38275) both residents of Ahmedgarh Mandi, Dehleez Road, Malerkotla for cheating to the tune of Rs.2,50,000/- on the pretext of sending the complainant to Poland and threatening to kill and abusing. Sir, it is submitted that I Gurdip Singh son of Harbans Singh am resident of VPO Bhogpur, District Jalandhar and a Halwai by profession. On 24.08.2023, I met agent Imran Khan son of Shahid Khan in his office Easy Visa, Ahmedgarh Mandi Dehleez Road, Malerkotla, who said to me that we use to send persons abroad and I will get your visa for Poland, but an amount of about Rs.7,50,000/- will be the expenditure for the same and I will take entire money on reaching you at Poland. Agent Imran Khan got my Visa for Dubai and he along with me also left for Dubai on 3.9.2023. There, agent Imran Khan said that now your further visa is to be taken for which you give Rs.2,50,000/- to my father Shahid Khan. I said to agent Imran Khan that you had agreed that I will have to pay nothing earlier, upon which agent threatened me that if you will not give Rs.2,50,000/- then I will close your work here. On putting pressure by agent Imran Khan, on 16.09.2023, my wife Harkit Kaur gave Rs.2,50,000/- to Shahid Khan father of above agent Imran Khan in cash at his home, the video of which is safe with us and I can produce to you. On 17.09.2023, above agent Imran Khan left me in Dubai and returned back to India without informing me and handed over my passport to a girl named Najma Khan. When I demanded

my passport from Najma Khan then she threatened me that if you will not give me 300 dirham I will tear your passport and will get you in jail. Under fear I gave 300 dirham to said Najma Khan and after getting passport returned back to India on my own expenses. After reaching home, I went to the office of Agent Imran Khan to meet him, then his father Shahid Khan started making false promises that yet my son is not at home and used to say that he has gone to Delhi. I many time requested Shahid Khan to get me to agent Imran Khan but Shahid Khan started abusing me. When I demanded my amount back from Shahid Khan then he said to me that I will not return you any money, whatever I have done, the same has been done as asked by my son Imran Khan and if you will come again here than I will get you killed. I am very poor person and earning livelihood by doing labour. I had given money to Shahid Khan as per saying of Imran Khan. Whenever I use to call agent Imran Khan, he do not picks my call and his father Shahid Khan uses to shunt me out of his office after abusing. Above agent Imran Khan in connivance with his father Shahid Khan has played fraud with me to the tune of Rs.2,50,000/- and they use to play fraud with many other innocent peoples like me by changing the name of their office and use to receive huge amount. It is requested to you that strict legal action may be taken against above agent Imran Khan and his father Shahid Khan and my money may be got returned to me and justice be delivered to me. I shall be thankful to you. Applicant Sd/- Gurdip Singh son of Harbans Singh VPO Bhogpur, District Jalandhar. Mobile No.98768-86819.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been roped in the instant FIR merely being the father of the main accused Imran. He further contends that there is an unexplained delay of more than one year in lodging the instant FIR as the occurrence took place on 17.09.2023 and the FIR has been registered on 21.09.2024. It has been contended on behalf of the petitioner that the petitioner is a man of clean antecedents as he is not involved in any other case. He further asserts that the petitioner has no role directly or indirectly in the commissioning of the alleged offence.

On behalf of the State/complainant

He would submit with the support of photographs that the petitioner has received Rs.2 lacs in cash on behalf of his son Imran, who is operating unauthorized immigration business by way of illegal means. He further contends that the petitioner has also stated to have admitted the fact with regard to receipt of the above said amount though taking an excuse that it was on behalf of his son Imran and he has nothing to do with the alleged offence. This very defence raised by the petitioner is totally unfounded and he does not deserve the concession of anticipatory bail as has been averred by learned State counsel.

4. **Analysis**

Considering the fact that immigration fraud seems to be of growing concern especially in the State of Punjab over recent years, the desire to settle abroad has led many individuals to fall prey to fraudulent

agents and consultants who promise them jobs and visas in exchange for hefty fees. These fraudsters often target vulnerable individuals, including young people and farmers, who are desperate for better job opportunities, they dupe these innocent people of their hard earned money without even thinking about their future prospect. The consequences of immigration fraud can be severe, including financial loss and even human trafficking. Therefore, it is essential for the Government and for the law enforcement agencies to take strict actions against these fraudsters and raise awareness among the people about the risk and consequences of immigration fraud.

Coming back to the present case in hand, wherein the petitioner was duped by the accused persons on the pretext of sending him abroad on work visa is another example of the immigration scams, which needs to be curbed at this very stage. Therefore, this Court deems it appropriate that custodial interrogation of the petitioner is required to unearth the ramifications involved in the present case.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** 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.

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.”

5. Decision

In view of the above, the present petition is accordingly dismissed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

22.11.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No