

2024:PHHC:156552



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58554-2024
DECIDED ON: 27.11.2024

DILDAR SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. K.S. Brar, Advocate
for the petitioner.

Mr. Rubal Pawar, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 482 BNSS, has been invoked seeking anticipatory bail to the present petitioner in FIR No. 60 dated 09.05.2024 under Section 420 of IPC, 1860 (Section 13 of Punjab Travel Professional (Regulation) Act, 2014 registered at P.S. Division E, District Police Commissionerate, Punjab (Annexure P-1).

2. Prosecution story, set up in the present case as per the version in the FIR read as under :-

'Reference of the Application No. 310487 - PGD Dated 28.02.2024 + 317013 - PGD dated 13.03.2024 + 1139 PC COP dated 01.04.2024+ 792 PC dated 18.03.2024 from Avtar Singh C/o Charanjeet Singh, resident of House No. 163 Josan Colony, Village Kamboj Ajnala Road, Amritsar against Dildar Singh son of Chand Singh, resident of Flat No. 202-B, Impanel Tower Pil Model Mohali from

cheating to the tune of Rs. 6 lacs 28 thousand 900 hundred rupees on the false pretext of sending to Australia was received in the post after inquiry report of the Hon'ble Commissioner Police was received in the police station and the details of which is as under: To the Commissioner Sahib. Amritsar, Sir it is requested that my name is Avtar Singh son of Charanjeet Singh resident of Village Kamboj District Amritsar and I am performing duty at Shiromani Gurudwara Parbhandak Committee Amritsar. That in the month of January 2023 I was performing duty of Saragarhi Sran where I met the of Ex-Member Makhan Singh Nangal namely Dildar Singh son of Sh. Chand Singh, resident of Flat No. 202-B, Imperial Tower Pir Model Mohali I was already known to me and during conversation Dildar Singh stated that I am doing the job of Agent and I have one of my friend is posted at Delhi Embassy of Australia. If you want to send anyone to Australia then he can send in small amount and I stated to him that you send me to Australia and he stated that I should give all of my documents to him and he is living Saragahi Sran. That I send to him on his mobile no. 95514-00034 the photocopies of my Aadhar Card and Passport and after few days Dildar Singh met at Sri Guru Arjan Dev Ji Niwas and stated that if any of your friend or relative is staying in Australia then you can get sponsorship from him and your work will be done in short time, and I stated to him that my friend is living in Brisbane and I can get sponsorship from him and then my friend Gurmander Singh and me sponsorship and then I send the sponsorship on the whatsapp of Dildar Singh and then Dildar Singh stated that he will prepone his file very soon and I have to come at Australia in few days and he will get money from me. Then I asked from Dildar Singh that how much amount you will charge from the whole process who started that he change 20-25 Lacs from other lent he will charge 12 lacs from him. I stated to him that I cannot pay the money in one time and I will pay in installments on which on 31.03.2023 Dildar Singh met me at Sri Guru Arjan Dev Ji Niwas and stated that your file is ready and we have to attach the single ticket with the file and I stated to him that I have Rs. 20,000/- which I can Gpay to you who stated that you Gpay Rs. 20,200/- and you can pay the money of the ticket after wards and then I transfers Rs. 20,200/- to Dildar Singh on his mobile No. 72789-00006 and in the month of April 2023 Dildar Singh stated that we have to the ticket and also file the band in the Embassy and you give me Rs. 2 lacs and then on 05.04.2023 I gave Rs. 55,000/- and on 06.04.2023 Rs. 1 lacs and on 07.04.2023 I transfers Rs. 49,500/- and after few days Dildar Singh stated that I have to send your file to Delhi and he have to give money he will take Rs. 6 lacs afterwards and I on the same day borrowed Rs. 50,000/- from my friend Satinder Singh and Rs. 50,000/- from my friend Jagjeet Singh and I already had Rs. 1 lac with me and I gave Rs. 2 lacs to Dildar Singh at Guru Arjan Dev Sran and also G-Pay Rs. 2 lacs to him on different and after same time Dildar Singh stated

making excuses that your work will be done shortly and you gave me the balance Rs. 6 lacs and I stated that I will give after the work is done the balance amount and on which Dildar Singh started that he has come after meeting the Visa officer and your visa would be stamped shortly. But he did not get my visa stamp and I used to go to meet him at Hotel Sawed Ghee Mandi Amritsar. Then I came to know that Dildar Singh has not got my visa stamped and Dildar Singh is cheating me and when I demanded money from Dildar Singh, then he on different dates returned me Rs. 1,74,000 / - and the remaining Rs. 4,54,900/ - has not been returned by him and now Dildar Singh have also stopped answering my phone calls. So in this manner Dildar Singh on the false pretext of sending me to Australia have cheated me to the tune of Rs. 6,28,900/-. So, legal action be taken against Dildar Singh and my money be got returned back and I am presenting before you the receipt of submitting the file in the Australian Embassy by Dildar Singh and the statement of the money given to Dildar Singh on different date from my mobile no. through google pay. Your sincerely Sd/- Avtar Singh. Name Avtar Singh son of Charanjeet Singh house no. 163 Joshan Colony, Village Kamboj Ajnala Road, Amritsar, Mob. No. 98888- 28666.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner argues that the petitioner has been falsely implicated in the present case by the complainant in connivance with the local police officials. He submits that the petitioner had borrowed ₹3 lakhs from the complainant as a friendly loan, which was repaid in installments, partly in cash and partly through online transactions.

It is contended on behalf of the petitioner that he owns a tour and travel business and is holding three vehicles that the complainant rented on multiple occasions without paying the rental fees. He undertakes before this Court that the petitioner is ready and willing to join the investigation.

On behalf of the State

Mr. Rubal Pawar, AAG Punjab, appearing on advance notice prays for dismissal of the present petition on the ground that the recovery of Rs.6,28,900/- is yet to be effected from the petitioner, which were received by him

through his friend (travel agent) on the pretext of sending the complainant to Australia.

4. Analysis

The complainant had paid Rs.6,28,000/- to the petitioner, who promised to facilitate the complainant's travel to Australia. However, the petitioner failed to fulfill this promise and despite repeated requests, only returned Rs. 1,74,000/-, whereas Rs.4,45,900/- is still outstanding qua the petitioner, this court is of the firm view that his custodial interrogation is required as, *prima-facie* offence under Section 420 of IPC is made out, against him and also amount is to be recovered. Such an allegation certainly requires adequate and intense investigation to unearth the truth. The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

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.”

More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in “State vs. Anil Sharma”; (1997) 7 SCC 187, held as under:-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often

interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

5. Decision:-

In view of the seriousness of the allegations as also the need to take the investigation to its logical conclusion, the custodial interrogation of the petitioner is certainly required. Therefore, I find no merit in the instant petition, hence, the same is hereby dismissed.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

(SANDEEP MOUDGIL)
JUDGE

27.11.2024

Meenu

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