IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40751-2024
Reserved on: 13.11.2024
Pronounced on: 29.11.2024

Dilbagh Singh ...Petitioner

Versus

State of Punjab …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Liaqat Ali, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

Mr. Amit Dhawan, Advocate
for respondent No.2.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
34	28.04.2024	Bhargo Camp, District Police Commissionerate, Jalandhar	406, 420, 120-B IPC and Section 13 of Punjab Travel Professional (Regulation) Act 2014

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In the bail application, the petitioner is silent about criminal antecedents.

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

> *"2. That present FIR No. 34 dated 28.04.2024 Under Section 406, 420,120-B IPC & Section 13 Punjab Travel Professionals (Regulation) Act, 2014, Police Station Bhargo Camp, Jalandhar, was registered against Dilbagh Singh i.e. petitioner, Rajinder Singh, N.S. Raja Ram, Krushil, Kaushikbhai Ponkiya on the basis of complaint bearing no. 5063 DCP dated 28.08.2023 and complaint no.6194 DCP dated 13.10.2023 filed by complainant Sunil Bhatia against Dinesh Kumar, Harwinder Singh, Dilbagh Singh i.e petitioner, Nandani wife of Dinesh Kumar, Raja Ram and Go abroad Solution wherein complainant has stated that petitioner Dilbagh Singh and other co-accused have taken ₹30,00,000/- from him on the pretext of sending his son to Canada but thereafter, neither his son was sent abroad nor the abovesaid amount was returned."*

4. The petitioner's counsel prays for bail by imposing any stringent conditions and

contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to the translated copy of the FIR, Annexure P-1, which reads as follows:

> *"….Dear Sir, I am XX son of Mr. AA resident of xxx Jalandhar and request as follows:*
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> *(1). That I am resident of the above address. I have two sons named Axxxand Bxxx, out of which A is living in America. It is worth mentioning that my son A was sent to USA by the above mentioned Dinesh and Harvinder in the year 2018 and because of this I believed in them*
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> *(2). That my other son BB who is married wanted to settle in USA and I spoke to the above mentioned Dinesh Kumar in this regard and he told me that he along with other companions Harwinder Singh and Dilbagh Singh has good connections in the USA Embassy and he will get my son B a visa to USA and get a work permit there, for which he asked me 26 lacs and I gave him 5 lacs cash at that time. They said that they will send my son to Dubai and get a USA visa from there and will get the rest of the money after arriving, so as promised, they sent my son to Dubai on 09.01.2021, who stayed in Dubai for 4 months. When my son was in Dubai, on 22.01.2021, Harvinder Kumar and Dinesh Kumar collected Rs 5.5 lakh from me and in this regard Dinesh Kumar also wrote a receipt which is attached to the CCTV footage. When my son's visa was not approved in Dubai, my son came back on 09.05.2021, after that I demanded Rs 8 lacs from Dinesh Kumar and Harwinder Singh. They evade to me.*
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> *(3). That in November 2021, Dinesh Kumar and Harvinder Singh again came to us from whom we asked for our money, then they told that the Visa of USA has closed due to lockdown and they get the visa of Canada and settle my son to Canada. They asked me for 35 lakh rupees and deal has been done for 30 lakh rupees. At that time there were also talks that they have received the first 10 lakh rupees from me. They will adjust the money to this amount. At that time I gave my son's passport to the above accused.*
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> *(4). That on 10.12.2021 he sent me a video in which he showed me that my son's passport has got a visa and he demanded the remaining money. When we asked them for the original passport, they said that they will return my son's passport only after collecting all the money. On the demand of the above accused and according to his statement, Rs. 4 lakh in the bank account of Raja Ram on 18.12.2021 and Rs. 1 lakh on 21.12.2021 in the name of Dilbagh Singh, Rs. 8 lakh on 01.01.2022 to the above Abroad Solution in the bank account and on date 04.01.2022 transferred Rs.4 lakhs to Raja Ram's bank account. All this amount was transferred from my wife W and son B. In addition, I transferred Rs.1 lakh in the name of Raja Ram and Rs.1.5 lakh in the name of Abroad Solutions from my account on 04.01.2022 at the behest of the above accused. After this, on 05.01.2022, Dilbagh Singh took cash of Rs 2.5 lakh to our side, the CCTV recording of which is also with us. Thus, after collecting all the money, I gave 30 lakh rupees to the above accused because he had sent me the photo of the visa on my son's passport and I was sure that my son would go abroad soon.*
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> *(5). That in the meantime, he also sent me an air ticket in my son's name,*

which he later canceled himself.

(6). That when the above accused returned my son's passport to me, I got my passport checked at the agent side in PPR Mall and that visa turned out to be fake.

(7). That after that I told about this to Dines Kumar, Harvinder Singh and Dilbagh, they did not agree to this and on the contrary kept telling Visa that it was right. After that I kept asking for my 30 lakh rupees back and out of which they sent about 1 lakh rupees to my wife's account. When I asked for the remaining amount, Dinesh Kumar give a cheque of his wife name of Rs.2.5 lakhs and the cheques amount of Rs.5.5 lakhs given by Harwinder Singh and the cheques of Rs. 1,80,000/- given by Dilbag Singh. All the said above said cheques deposited in the bank in the month of June but all failed due to lack of money in the accused's account. After that, we demanded our money, then again the above accused asked to deposit the cheque in the bank and when we again deposit the cheques all the cheques failed again on 31.07.2023 and all the other accused also failed to pay the remaining amount. Accused agreed to pay back the money several times over his phone, the recording of which is attached. But the money has never been returned till date.

(8). That in this way, all the above-mentioned accused have conspired and embezzled 30 lakh rupees from applicant by applying fake visas, for which all the accused are responsible. Therefore, you are requested to take strict legal action against the above accused and return my money 30 lakh rupees to the above accused. I will be very thankful to you. Dated 28/08/2023.Sd/-(English) SB"

7. The complainant's specific stand is that when they checked the Visa it was found fake, despite that, the copy of the fake Visa was not attached in the reply, and no explanation has been offered for not attaching copy of the same, which is the primary evidence of the alleged fraud. This aspect becomes relevant given the petitioner's explicit stand in the bail petition, in paras 4 to 6, which read as follows:-

"4. The petitioner was running the medical store in District Jalandhar. The copy of license issued by the authority is attached as Annexure P-2.

5. That the petitioner suffered losses in his business the petitioner has need of money to extent his business, in this regard the petitioner approach Dinesh Kumar & Harwinder Singh, Dinesh Kumar is recovery agent in finance company and Harwinder Singh is running the gold shop. Harwinder Singh gave the loan against the gold. Petitioner have no gold article so he pledge his property and taken Rs 1.5 lacs amount on interest from the Harwinder. They also took the 4 blank cheques from the petitioner. Later on they also taken the three blank, signed, stamp papers of Rs 500, Rs 100, Rs 100 from the petitioner. The photocopy of stamp papers is attached as Annexure P-3.

6. Thereafter, Dinesh Kumar and Harwinder Singh said to the petitioner that we want to transfer some money to your personal account and some of the amount be pay to you in cash and you will be further transfer the amount to different accounts. According their instruction, I transferred the amount to different accounts. On 20.11.2020 Rs 18,000/, 6.3.2021 Rs 1,68,000/, 6.3.2021 Rs 32,000, 12.4.2021 Rs 90,000/-, *13.4.2021- Rs 1,00,000, 4.1.2022 Rs 1,00,000/, 10.4.2021 Rs 30,000/- transferred in the account of abroad Solution, On 19.1.2021 Rs 1,00,000/- transferred in the account Krushi. Transfer through CDM in the account of Gurpreet Kaur, 16.2.2021 Rs 44,500, 16.2.2021 Rs 44,000, 12.1.2021 -Rs 1,00,000/-,16.2.2021 transfer of Rs 47,000/-, 12.1.2021 - Rs 82,500/-, 16.2.2021 -Rs 46,000/- Rs 17500/- and Rs 20000 transfer in the account of Gurpreet Kaur. The copy of the bank statement of petitioner and Receipts are attached as Annexure P-4. The complainant had paid Rs 1Lacs and 2.5 Lacs to the petitioner, petitioner further transferred the amount to different accounts, according to the instruction of Dinesh Kumar and Hawinder Singh. That as per the FIR no offence is made out against the petitioner. The delay of FIR is 2 years."*

8. The investigation is silent about the petitioner's stand. If the petitioner's stand is found correct after further investigation, it would certainly point towards a dangerous trend of false implication by concocting allegations of Visa fraud.

9. An analysis of the petitioner's stand, the missing copy of the alleged fake Visa and passport details in the reply, and the delay in the FIR are crucial factors.

10. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to investigate further. If sufficient evidence is collected to launch prosecution or to frame charges, this Court is not considering the evidence at that stage. Still, it is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

11. Given the above, the penal provisions invoked coupled with the primafacie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

12. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on anticipatory bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

13. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the	

	attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

14. This order is subject to the petitioner's complying with the following terms.

15. *The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator*. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

16. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

17. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

18. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

19. However, before closing, it is essential to save our Nation's prestige and people's reputation and to sensitize the system.

20. The alarming escalation of visa fraud cases, in which individuals are deceived into parting with substantial sums of money under the guise of securing visas or job permits by claiming contacts and acquaintances with the embassy officials, reveals a disturbing undercurrent in the realm of immigration crime. Often, the victims themselves, complicit in their own exploitation, resort to unethical and dubious means to secure travel

or employment opportunities, only to later cry foul when they fall prey to fraudulent schemes. This situation is not unlike the proverbial "kettle calling the pot black," where those who themselves engage in questionable conduct seek to shift the blame onto others when they become victims. While these individuals may indeed be guilty of their own lapses in judgment, this should not exonerate the fraudsters who orchestrate these deceitful operations. The perpetrators must be held accountable under the law and brought to justice, irrespective of the victim's participation in their own victimization. It is imperative for investigative authorities to adopt a rigorous and comprehensive approach in probing allegations of fraud involving significant sums of money exchanged under the pretense of securing visas or permits. These Visa-thugs, often masquerading as legitimate agents or portraying closeness and connections with the Embassy officials, must be subjected to meticulous investigation. A failure to confront this growing phenomenon risks normalizing such fraudulent practices, potentially reviving criminal practices reminiscent of thugee, an organized historical network operating with secrecy, exploitation, and manipulation of its victims. If these fraudulent activities are left unchecked, there exists a tangible possibility of a resurgence of such nefarious operations, a phenomenon that could tarnish the nation's reputation on a global scale and undermine the integrity and legality of immigration systems, where one can already feel the headwinds.

21. At the same time, addressing the dangers of false accusations, often fabricated to recover loans or settle financial scores, is crucial. In such cases, an investigation must be undertaken to distinguish between genuine fraud and baseless claims, which should be painstakingly detailed. Let the law not be manipulated as a tool for financial recovery.

22. In the spirit of fairness, it is crucial that law enforcement conducts these investigations with due diligence, ensuring that the integrity of the legal process is maintained. Such thoroughness is essential for protecting legitimate victims of visa fraud and preventing the misuse of the justice system by those seeking to settle financial disputes under false pretenses. In doing so, law enforcement will uphold the trust of the public and ensure that justice is served without prejudice or bias.

23. Thus, whenever an FIR is registered on the allegations of Visa fraud or allurement to send abroad, the law enforcement agencies must verify the complainant’s credentials, including their passport, visa status, educational qualifications, and claimed professional skills. The investigation should catalog and attach photocopies or digital scans of all relevant documentation while returning the original materials, like Passport, etc., to the complainant. The bank accounts in which the money was received must be frozen to the extent of the amount credited as a trail of allurement. False accusations must also be put to trial.

24. The Director Generals of Police for the States of Punjab, Haryana, and the Union

Territory of Chandigarh must issue general directions to all concerned by Jan 15, 2025.

25. The Registry to communicate this order to the respective Director Generals of Police.

26. A certified copy of this order would not be needed, and the downloaded copy of this order from the official web page of this Court shall suffice. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

27. Petition allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

29.11.2024
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Whether speaking/reasoned: Yes
Whether reportable: YES.