**(1996) 12 P&H CK 0057**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. 10050-M of 1996

Avtar Singh Walia APPELLANT

Vs

Chandigarh Administration, Chandigarh RESPONDENT

**Date of Decision :** 05-12-1996

**Acts Referred:**

**Citation :** (1997) 2 RCR(Criminal) 42

**Hon'ble Judges :** M.L.Singhal, J

**Advocate :** R.S. Rai, Jagdish Marwaha, Advocates for appearing Parties

# Judgement

M.L. Singhal, J.

1. This is a Criminal miscellaneous Petition No. 10050M of 1996 filed by Avtar Singh Walia, petitioner whereby he has prayed for the grant of anticipatory bail to him in case FIR No. 4 of 1996 of PS Central, Chandigarh under Sections 406/420 IPC read with Section 25 of Immigration Act. According to the prosecution, Avtar Singh assured Harjit Singh to send him abroad and arrange a very good job for him there. He took a sum of Rs. 50,000/ from him by way of initial expenses and told him that he would get the balance amount of Rs. 20,000/ from him after arranging visa for him. He accepted the proposal put forth by him bona fide under the belief that he had known his relatives who are residents of H. No. 74, Sector 33A, Chandigarh and were residing abroad and he must be a reliable person. He told him that there was one Kasturi Lal Sachdeva resident of H. No. 85, Sector 33 A, Chandigarh who was aslo interested in going abroad. He further told him that he would also accompany them for arranging suitable job for them and also arranging accommodation for them there. For carrying out the nefarious designs, he floated a bogus firm K.H. Import and Export showing both of them as partners i.e. Harjit Singh and Sachdeva and got this firm registered in the Govt. of India office Sector 35, Chandigarh. He also got opened current account of this firm in Punjab National Bank, Sector 33A, Chandigarh. Harjit Singh was asked to depostit Rs. 2.00 lakhs in this account and he would get this amount transferred to his account at an appropriate time.

Harjit Singh arranged the requisite amount and deposited Rs. 2.00 lakhs in the said account in the name of M/s. K.H. Import and Export through bank drafts. He (petitioner) told Harjit Singh that he would be arranging sponsorship for him from Japan and then arrange visa on his passport within a month or so and then he would call him. After two months, when Harjit Singh heard nothing, he contacted Avtar Singh personally. Avtar Singh told him that he had sponsorship from Japan but that was of his own passport and that his previous passport had been seized in Dubai in the year 1993 and that he had applied for a fresh passport. Petitioner assured him that he would be accompanying him to Japan as soon as he was able to get fresh passport. Harjit Sing met petitioner (Avtar Singh Walia) in his office but no response came. During December 1993, petitioner received sponsorship for Harjit Singh and Kasturi Lal and he told him that he would be getting visas within a few days. Petitioner told them that they should transfer the settled amount in the current account of the firm 3B International in the Oriental Bank of Commerce, Sector 17, Chandigarh. As desired by the petitioner Cheque No. 145401 dated 28.12.1993 for Rs. 1 lakh was issued to the petitioner and Rs. 2 lakhs was withdrawn vide Cheque No. 145402 dated 28.12.1993 from the Punjab National Bank, Sector 33A, Chandigarh.

2. This amount was deposited in Oriental Bank of Commerce, Sector 17, Chandigarh in 3B International account including Rs. 1 lakh as share of the other aspirant i.e. Kasturi Lal. Harjit Singh was asked to keep his bag and baggage ready and he would intimate him the flight number and the time table as and when he got intimation about the flight number and the time table. Harjit Singh was taken in by this talk of Avtar Singh Walia as he was unemployed and he promised to send him abroad and arrange a job for him there. Petitioner got their signatures of 20 blank slips duly stamped with revenue stamps after the deposit of amount in his bank account and told them that he was doing so in order to satisfy the Income Tax authorities and that it was only a formality. He contacted Avtar Singh several times and requested to sent him abroad and arrange a job for him or else he should refund him a sum of Rs. 2.50 lakhs but to no effect. Avtar Singh Walia thus cheated him of a sum of Rs. 2.50 lakhs. It was all a fraud on his part. It was not a genuine firm which he allegedly floated. K.M. Import and Export was a fictitious firm and the account opened in the Punjab National Bank in the name of said firm was also a fictitious account. To further camouflage Avtar Singh Walia withdrew a sum of Rs. 2 lakhs through Cheque No. 145402 dated 28.12.1993 from the Punjab National Bank, Sector 33A, Chandigarh and deposited this amount in the account of 3B International in Oriental Bank of Commerce, Sector 17, Chandigarh as also the amount of Rs. 1 lakh as share of the other aspirant.

3. It was submitted by the learned counsel for the petitioner that the petitioner was running the business of Import and Export under the name and style M/s 3B International, Sector 11, Chandigarh and dealing in the import of plastic scrap and export of engineering goods i.e. bicycles parts, nuts and bolts, tyre and

 

tubes and travel agency was never started by him. He never indulged in sending people abroad. He is a respectable person and is dealing in the export business and getting income tax and sales tax concession and Govt. of India is giving him cash incentive to the tune of Rs. 70,000/ per month. He is earning more than Rs. 8,00,000/ annually as cash incentive from the Govt of India in addition to the profits which he makes by exporting material to foreign countries. He is an income tax assessee and is the owner of house in Sector 15B, Chandigarh. He is also owner of agricultural land. He is member of Engineering Export Promotion Council, a Govt. of India enterprise. Membership of this council was conferred on him as being the best exporter of material to foreign countries and thus earning foreign exchange for India. Harjit Singh is the brotherinlaw (wife''s brother) of Jaswinder Singh son of Jaswant Singh. Petitioner was known to Jaswant Singh whose son Jaspal Singh and his duaghterinlaw are running business of import and export of plastic material under the name and style of M/s. GBS International, USA. Jaswant Singh was managing the shop at Chandigarh. Jaswant Singh accordingly booked two containers of plastic scrap to be supplied to the concern of Avtar Singh Walia from the firm of his son from USA. Two containers through shipment were sent by Jaspal Singh son of Jaswant Singh. Material received was less in quantity. Protest was lodged with Jaswant Singh who was managing the affairs of GBS International at Chandigarh. Jaswant Singh told the petitioner that Harjit Singh will be surety to make good the deficiency in the supply of the plastic scrap. As Harjit Singh started managing and controlling the affairs of M/s GBS International at Chandigarh, petitioner placed order for the supply of plastic scrap with GBS International through Harjit Singh and Jaswant Singh at Chandigarh. Said Jaswant Singh after involving the petitioner with the firm of his son for the import of plastic scrap, further involved one Shri Kasturi Lal Sachdeva s/o Kanshi Ram. Jaswant Singh got firm started under the name and style K.H. Import and Export at Chandigarh with Kasturil Lal Sachdeva and Harjit Singh as Partners of the firm. It was further submitted that the said firm was a genuine firm with Kasturi Lal and Harjit Singh as partners. Annexure P2 partnership deed was drawn up. Account opened by this firm was a genuine account. Annexure P3 is the pass book issued by the Punjab National Bank. It was submitted that Harjit Singh and Kasturi Lal Sachdeva went to the office of the petitioner along with Jaswant Singh and informed him that Harjit Singh had started his own concern with Kasturi Lal Sachdeva and in case investment was made for the supply of material through the firm K.H. Import and Export, petitioner would not suffer any loss of material and it would be the responsibility of the partner of K.H. International to ensure the correct supply of the material. Petitioner deposited Rs. 1 lakh in advance with the firm K.H. International on 27.12.1993 and Annexure P4 is the deposit slip. Harjit Singh applied for allotment of code number to firm K.H. International by the Reserve Bank of India and submitted the necessary forms.

4. Annexure P5 is the copy of the said form. It was submitted that Harjit Singh was running partnership business with Kasturi Lal Sachdeva and got invested Rs.

 

1 lakh in his firm K.H. Import and Export from the petitioner. Application for getting the code number from the Reserve Bank of India could not materialise. Harjit Singh approached the petitioner to join them in the transaction of the already placed orders by the firm of the petitioner for the shipment of three containers from GBS International in the name of firm of petitioner who was holding code number of the Reserve Bank of India for import and export of raw material and on 28.12.1993, Kasturi Lal Sachdeva went along with Harjit Singh and Jaswant Singh with the invoice signed by Harjit Singh Liaison Manager of GBS International to share the profit by joining hands with the petitioner. A sum of Rs. 2.5 lakhs was deposited by Kasturi Lal Sachdeva and Harjit Singh in the bank account of the firms of the petitioner. Invoices were also got deposited with the bank of the petitioner. Annexures P6, P7, and P8 are the copies of the invoices. There was thus transaction between petitioner and partners of M/s K.H. Import and Export to share the profits by selling three containers which were to be received from GBS International in the name of the firm of the petitioner. It was submitted that Harjit Singh had falsely alleged that he had given Rs. 50,000/ in one instalment and Rs. 2 lakhs as one instalment to petitioner for sending him abroad. Fact of the matter is that Harjit Singh and Kasturi Lal Sachdeva invested Rs. 2.5 lakhs on 28.12.1993 for sharing the sale proceeds of three containers which were to be received by petitioner from GBS International through Harjit Singh, Liaison Manager of GBS International. It was submitted by the learned counsel for the petitioner that the petitioner was not running a travel agency. He was rather a Govt. recognized exporter and income tax assessee holding permit for export from Reserve Bank of India and getting incentive from the Finance Department of the Central Govt. every year. In support of this submission he drew my attention to Annexures P17 to P26. Kasturi Lal Sachdeva and Harjit Singh invested the amount on behalf of their concern in the business of petitioner. It was submitted that K.H. Import and Export was a partnership firm in which Kasturi Lal Sachdeva and Harjit Singh were partners.

5. This firm was floated on 3.12.1993. Its business was to import plastic material and plastic scrap/waste and also printing machinery and the export of finished plastic goods. It was submitted that a similar complaint was made by Jaswant Singh which was compromised. According to Jaswant Singh, Avtar Singh Walia (petitioner) had approached his son Jaspal Singh who was residing in USA through him for doing import and export business. Petitioner asked Jaspal Singh to despatch 3 containers of plastic scrap in the name of firm 3B International on credit facility for a month or so. It was agreed in the presence of Jaswant Singh that some amount in part payment will be made to his son Jaspal Singh in the name of M/s GBS International and the remaining amount will be remitted in the bank only after receipt of documents from USA by Avtar Singh Walia. Jaswant Singh had agreed to be surety for petitioner. Three containers of plastic scrap were shipped by Jaspal Singh from USA to Bombay Port in the name of 3B International through shipping company Sea Land Agency Inc. International USA. According to Jaswant Singh, he contacted Avtar Singh Walia for payment of the

balance amount and he expressed his inability to pay the amount. Jaspal Singh had to honour his commitment and clear his liabilities as he was surety for Avtar Singh Walia. Avtar Singh Walia did not pay the amount of Jaswant Singh. So far as the alleged liability of Avtar Singh Walia towards Jaswant Singh is concerned, that was to be settled through the arbitration of Shri Devinder Singh and Shri Vijay Pal Singh.

6. It is a mater to be brought on the surface by investigation whether petitioner was a travel agent running a travel agency and was holding out assurances to the people to send them abroad and arranging jobs for them there. It is also a question to be brought on the surface by investigation whether the petitioner took any amount from Harjit Singh and Kasturi Lal Sachdeva after inducing them into the belief (though falsely) that they would be sent abroad and jobs would be arranged there for them. It is also a question to be brought on the surface during investigation whether K.H. Import and Export was a genuine firm floated by Hajit Singh and Kasturi Lal Sachdeva or it was a fake firm got floated by petitioner to enable himself to cheat them of Rs. 2.5 lakhs and that nothing was to be imported or exported by M/s K.H. Import and Export. It is also a question to be brought on the surface during investigation whether any plastic scrap was to be imported from M/s G.B.S. International in the 3B International for and on behalf of M/s. K.H. Import and Export.

7. It is a case where essentially disputed facts are involved. Short question involved is whether K.H. Import and Export was a genuine firm floated by Harjit Singh and Kasturi Lal Sachdeva themselves or it was a fake firm got floated by Avtar Singh Walia with the intention to cheat them and camouflage the real position. Petitioner appears to be running 3B International dealing in the import and export of plastic scrap from G.B.S. International, USA. Facts of the case suggest that anticipatory bail should be allowed to the petitioner. It is, therefore, ordered that in the event of arrest, investigating officer will call upon Avtar Singh Walia to furnish bail with personal bond of Rs. 10,000/ together with surety bond of the said amount. He shall not leave the country without the prior permission of the Court. He shall join the investigation and make himself available to the investigating officer to dwell on the investigation of the case as and when he calls upon to do so. Avtar Singh Walia shall deposit Rs. 2.5 lakhs in the Court of the Ilaqa Magistrate, Chandigarh which shall be withdrawn by Harjit Singh on adequate security being furnished by him to the satisfaction of the Ilaqa Magistrate, Chandigarh or the Duty Magistrate, Chandigarh as the case may be. In case Avtar Singh Walia is not found liable to Harjit Singh, he will refund the amount together with interest thereon @ 12% per annum. Interest will run from the date the deposit is made in the Court of the Ilaqa Magistrate till the date Harjit Singh repays to Avtar Singh Walia.

8. This Criminal. Misc. Petition stands disposed of with above observations.

JUDGMENTed accordingly.

 