
(2021) 10 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 32136 Of 2021

Nitish Dhiman

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 406, 370, 420
Immigration Act, Of 1924 — Section 24

Citation : (2021) 10 P&H CK 0058

Hon'ble Judges : Arvind Singh Sangwan, J

Bench : Single Bench

Advocate : Vivek Goyal

Final Decision : Dismissed

Judgement

Arvind Singh Sangwan, J

This is the second petition that has been filed for grant of anticipatory bail in FIR No.152 dated 12.05.2020 registered under Sections 406, 420, 120-B IPC (Section 370 IPC and Sections 10, 24 of the Immigration Act added later) at Police Station Sadar Yamuna Nagar, District Yamuna Nagar.

The first petition, bearing CRM-M-26229-2021, was dismissed on merits on 19.07.2021 by passing the following order:

"Counsel for the petitioner has submitted that the FIR was registered on a complaint given by one Savita Devi that her brother Rajat Saini was interested in studying abroad. One Ramesh Kumar resident of her village was known to them and thereafter, the complainant and her brother Rajat Saini came in contact with the petitioner - Nitish Kumar Dhiman and Gaurav Kumar through the aforesaid Ramesh Kumar. They told the complainant to arrange Rs.14.00 lacs for sending Rajat Saini abroad on work permit. On such representation, the complainant and her brother arranged Rs.14.00 lacs and paid the same to the petitioner - Nitish Kumar Dhiman. The petitioner has also sworn an affidavit as a security of the

said amount, however later on, neither Rajat Saini was sent abroad nor the amount of Rs.14.00 lacs was given back to the victim. It is also stated that though the petitioner has given a cheque of Rs.14.00 lacs but the same was dishonoured and thereafter, a complaint was filed under the Negotiable Instruments Act. Since the petitioner and Gaurav Kumar have committed a fraud and cheating, one FIR No.89 dated 25.04.2017 was also registered in Police Station Chhappar.

Counsel for the petitioner has argued that as per the allegations in the FIR, the petitioner has given 02 security cheques to the complainant and since the same was dishonoured, the petitioner has already availed the remedy available under the Negotiable Instruments Act and therefore, this FIR is not maintainable. It is also submitted that the police during the investigation has observed that the complainant could not show any proof of handing over the amount of Rs.14.00 lacs.

Counsel for the petitioner has further submitted that during the investigation, conducted by the police, before registration of the FIR, the petitioner has taken a plea that he came to know about the cheque only after receiving the summons from the Court and the same has been misused. It is also submitted that one of the co-accused Gaurav Kumar has already been granted the concession of anticipatory bail on 27.05.2021.

Counsel for the State has submitted that the allegations the complainant as a surety.

Counsel for the State has also submitted that the intention of the petitioner to cheat the complainant and her brother is apparent from the perusal of the FIR as the petitioner in conspiracy with the other accused persons, since the time of taking money, knew that they will not send Rajat Saini abroad and in that process, they induced the complainant and her brother to part away Rs.14.00 lacs and committed the offence of cheating and fraud. It is further submitted that mere filing of a complaint does not absolve the element of cheating and fraud committed by the petitioner. Lastly, it is submitted that the FIR has been registered after conducting an enquiry in which the petitioner was associated.

After hearing the counsel for the parties, considering the serious allegations against the petitioner and also in view of the fact that he has given an affidavit acknowledging the factum of receiving the amount as well as giving the cheque to the complainant just as a part of conspiracy in order to induce the complainant to part away the amount of Rs.14.00 lacs, I find no ground to grant the concession of anticipatory bail to the petitioner.

Dismissed."

Learned counsel for the petitioner seeks to re-argue the case on the grounds, which were available to the petitioner when his first petition was dismissed as he is relying upon a complaint of 2016.

Accordingly, finding no new ground to grant anticipatory bail to the petitioner, the present petition is dismissed.