

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-30019-2017
Date of decision :10.10.2017**

Khalid

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

This application for pre-arrest bail has been filed by petitioner – Khalid, an accused in FIR No.65 dated 27.02.2017 under Section 420 IPC (Section 379 IPC added later on) registered with Police Station Old Faridabad, District Faridabad.

Briefly stated facts of the case are that on 06.02.2017 complainant - Adarsh Kumar had gone to ATM of State Bank of India, at Badkhal Road in order to withdraw money; that he had withdrawn ₹10,000/-, he wanted to withdraw ₹5,000/- more, however ATM machine

was not accepting the ATM card; that one boy was standing behind him, he took his ATM card on the pretext of helping him and changed the same with another ATM card, thereafter telling the complainant that the same was not working; that a sum of ₹34,500/- had been withdrawn from account of the complainant. Formal FIR was registered on the basis of complaint submitted by the Adarsh Kumar to SHO Police Station Old Faridabad. Matter was investigated, accused Sameer was arrested, during the investigation he had demarcated the place of occurrence. The petitioner was named in disclosure statement of co-accused.

Apprehending his arrest, the petitioner had approached the Courts of Sessions seeking pre-arrest bail, but remained unsuccessful there, as such, he has knocked at the door of this Court seeking similar relief of pre-arrest bail.

Notice of the petition was given to the State, which has put in appearance.

Learned counsel for the petitioner has submitted that the petitioner was granted interim bail and he has since joined the investigation. He further submitted that since the petitioner has joined the investigation his custodial interrogation is not required. Furthermore, the petitioner is not named in the FIR. On 27.02.2017 demonetization process was on and money could not be withdrawn in the way alleged by prosecution. The petitioner is not such person who had allegedly taken ATM card of complainant and misused the same.

On the other hand learned State counsel has argued that though

the petitioner has joined the investigation but has not cooperated therein, he is involved in another criminal case, recovery of ₹11,000/- is yet to be effected from him, therefore, his request for grant of pre-arrest bail be dismissed.

After hearing the contentions put forward by learned counsel for the petitioner – accused as well as learned State counsel besides scanning the record carefully, I am of the view that there has been alarming increase in number of cases, where the innocent persons are being cheated by the criminals, who offered to render help in operating ATM Card and to withdraw money. These criminals needs to be dealt with sternly. It is well settled that custodial interrogation is more elicitation oriented since a person, who is couched in comparative safety of pre-arrest bail would certainly not disclose all the facts within his knowledge which would be inculpatory for him. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

The petition for pre-arrest bail of co-accused Safat, who was similarly placed has since been dismissed by this Court vide order dated 28.9.2017.

At this stage, question to be decided is that as to whether pre-arrest bail is to be granted or not. The truthfulness of the allegations in the FIR is not to be determined by holding a mini trial and the allegations are to be taken as such. Pre-arrest bail is a relief which is not to be granted just at

the asking of an accused in routine manner but in exceptional circumstances. Its purpose is not to screen the criminals from legal action and to save them from custodial interrogation which being more elicitation-oriented, result in the extraction of the important information from the mouth of a criminal. Custodial interrogation of the petitioner is necessary for proper and effective investigation. In case such custodial interrogation is denied to the investigating agency, that will leave many loose ends and loopholes, adversely affecting the investigation which is uncalled for.

Thus finding no merit in the petition, the same stands dismissed.

10.10.2017
Brij

(H.S. MADAAN)
JUDGE

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**