IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**CRM-M-9524 of 2017 (O&M)**
**Date of Decision : 03.04.2017**

Nitin Chhabbra ....Petitioner

Versus

State of Punjab ....Respondent

**CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. P.K. Longia, Advocate
for the petitioner.

**Surinder Gupta, J.**

This is second bail application filed by petitioner-Nitin Chhabbra seeking pre-arrest bail in case bearing FIR No. 51 dated 15.07.2015, registered for the offence punishable under Section 420 of Indian Penal Code (for short 'IPC'), at Police Station Division NO. 6, Jalandhar City.

Above FIR was registered against petitioner on the complaint of Baljit Singh, Branch Manager, Punjab and Sind Bank, Model Town, Jalandhar, which reads as follows:-

> *"Dear Sir, we want to bring to your knowledge that we have suspected a fraud by a person using ATM card. The process he used to execute the fraud is as follows:- He used to withdraw a sum, mostly ₹10000/- from our ATM Machine. As soon as the cash was dispensed by the machine, he quickly used to pull out the power plug of the machine or used to pull out the network cable. The result was that the machine stopped taking the Journal Paper Log (JP LOG) of the transaction. Thereafter, he used to call his own bank for taking claim of the money complaining that there was no cash dispensed from the ATM but his account was debited. The respective dispute got forwarded to us through proper channel routed through the*

*Head Office. They demanded the same JP Log of the said transaction. When the said transaction is not found printed or skipped in the Log, it becomes mandatory for the bank to remit the amount to Head Office, as it is considered a 'Failed Transaction'. Eventually, it came to our notice that the same person was claiming the amount from a very long time (List Attached), which pertained to our ATM (SPSBA0532) and that of Branch Lajpat Nagar Jalandhar ATM (SPSBA0098). We searched the CCTV Footage and found the person going towards the backside of ATM Machine for handling the cables. His photograph is also captured by ATM Machine's in built camera with time stamp and ATM Card No. Till date, he has claimed for an amount of ₹1,60,000/-, which is detected so far as per our record which pertains to two Branches, viz. Model Town, Jalandhar and Lajpat Nagar Jalandhar. You are requested to trace this person so that recovery may be made from him and further frauds by the person may be prohibited. Sd/- Baljit Singh, Branch Manager, Punjab & Sind Bank, Model Town, Jalandhar."*

Learned counsel for the petitioner has argued that the petitioner is not named in the FIR and is ready to join the investigation. The bank had alleged fraud of ₹1,60,000/- while during investigation six transactions by the petitioner have been found whereas other transactions were by different three persons. Even in CCTV footage, involvement of the petitioner could not be established. He has further argued that earlier bail application was dismissed as withdraw, as such, this application is not barred. He has relied on observations of Full Bench of Calcutta High Court in case of ***Sri Sudip Sen* vs. *The State of West Bengal*, 2012 (7) RCR (Criminal) 12** and Division Bench of Kerala High Court in case of ***Aneesh* vs. *State of Kerala*, 2014 (3) RCR (Criminal) 454.**

Firstly, I take submission of learned counsel for the petitioner that second application filed by the petitioner seeking anticipatory bail is not barred. Earlier bail application was withdrawn by the petitioner without seeking any permission to file fresh one. Legal proposition that second bail application is not barred under exceptional/changed circumstances is not disputed. In the citation ***Aneesh vs. State of Kerala (supra)*** referred by learned counsel for the petitioner, Hon'ble Division Bench of Kerala High Court had observed as follows:-

> "*14. For the aforesaid reasons, we answer the Reference as follows :*
>
> *(i) It cannot be said as an infallible and absolute rule that when an application for anticipatory bail is dismissed as withdrawn, the applicant cannot file a second application on the same set of facts.*
>
> *(ii) When a second application for anticipatory bail is made after withdrawing the first application, the court would consider the question whether the applicant was justified in withdrawing the earlier application or whether he was only gaining time or was indulging in forum shopping. The court has every discretion to deal with the application and consider whether the relief should be granted or not in the facts and circumstances of the case.*
>
> *(iii) When a request for withdrawal of the application for anticipatory bail is made, it would be ideal for the court to record as to why the applicant wanted to withdraw the application. If such reasons are*

*stated, it would enable the court to deal with the second application for anticipatory bail filed at a later stage. We hold that the statement of law in paragraph 12 of the judgment in* ***Jamsheer A.V.and another v. State of Kerala and others, (ILR 2013(3) Kerala 790)*** *is a wide statement and it was made on the basis of the finding that the reason stated for withdrawal of the earlier application for anticipatory bail was false.*

*(iv) We are not in full agreement with the view expressed in paragraph 11 of the judgment in* ***Varada Nadarajan v. State of Kerala, (2013(4) KHC 22)*** *that after withdrawal of an application for anticipatory bail, no second application can be maintained unless there is change of circumstances. We hold that in exceptional circumstances even in the absence of change of circumstances, a second application for anticipatory bail would be maintainable after withdrawal of earlier application, provided the court is satisfied that the attempt of the accused is not to delay the investigation of the case or to gain time in the matter of arrest or for some other undesirable gains."*

Learned counsel for the petitioner has not been able to make out any exceptional/changed circumstances after dismissal of earlier bail application, still I do not intend to dismiss this bail application only on the score that it is a second bail application filed by the petitioner after withdrawal of earlier one, rather proceed to decide it on merit.

Perusal of paper-book shows that when the matter was enquired, the person drawing cash from ATM machine was found going towards backside of ATM machine for handling cables. His photograph was captured by ATM machine's inbuilt camera with time stamp and ATM card number. During investigation, the petitioner was found to be the said suspected person. Identity of the petitioner has been established as the person, who was playing fraud with the bank and for further investigation his custodial interrogation is required as it is a case where a very novel method appears to have been adopted by the petitioner to dupe the bank of public money. The police is required to go deep into allegations against the petitioner and to find such other persons involved in such type of activities to safeguard the public interest.

Keeping in view above facts, I find no merit in this petition and the same is dismissed.

**April 03, 2017** **( SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/Reasoned Yes/No

Whether Reportable Yes/No