

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

CRM-M No.22790 of 2018

Date of decision : 17.09.2018

Sanjay Bhargav

.....Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Argued by : Mr. Sumeet Goel, Advocate, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Sumit Roy, Advocate for the complainant.

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DAYA CHAUDHARY, J.

Petitioner Sanjay Bhargav has approached this Court by way of present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.179 dated 27.09.2017 under Sections 380, 403, 406, 420, 201 of the Indian Penal Code, 1860 and Section 66 of IT Act, 2000 registered at Police Station Sector 53, Gurugram, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas he was not involved in the alleged commission of offence. Petitioner was neither named in the FIR nor any role has been attributed to him. He has been implicated during course

of the investigation. As per the allegations in the FIR, it is alleged that the complainant is known as one of the India's leading E-Wallet Companies through its flagship brand namely www.mobiKwik.com (website) and the complainant provided a platform where different consumers can at the same time have access to a variety of services. A mobile application Mobikwik Wallet was developed, whereby consumers of the complainant Company could directly browse through the products listed by different merchants on its platform and can at the same time pay for said product or service using their wallet balance. The complainant came across with some fraudulent transactions during reconciliation of its account and came to know that accused persons have taken benefit of a technical glitch in the complainant's software and thereby transferred the amount to their account without any legal right, which was exceeding the amount lying in their wallet. The present FIR was registered of allegations of cheating, theft, criminal misappropriation and criminal breach of trust of ₹ 19 crores against many persons including the petitioner. Learned counsel further submits that even the story appears to be concocted by the officials of Mobikwik Wallet Company in order to conceal their own lapse in not maintaining proper E-accounts of the Company resulting into transfer of certain amount to the account of different persons who are using the Mobikwik application. Learned counsel also submits that except the petitioner and 3/4 other persons, no other person has been arrested or arrayed as accused and no official of the Company has been held liable till date. Learned counsel further submits that the fraud of such level cannot occur without connivance

of the officials of the Company. The overall management and maintenance of E-wallet vests with the Company and the petitioner was not in a position to tamper with E-wallet of the Company to transfer such huge amount as alleged in the FIR. There is no other case against the petitioner or his family members and he is not having any criminal background.

Learned counsel for the petitioner further submits that the challan has been presented before the competent Court and charges have also been framed. All the prosecution witnesses are official witnesses and there is no possibility that the petitioner may tamper with the evidence or influence the witnesses. No purpose would be served by keeping the petitioner in custody. Learned counsel also submits that the petitioner has deposited an amount of ₹ 1,00,00,000/- in the account of the Company just to show his *bona fide* and ₹8,00,000/- stands freezed in his PNB account. Nothing is to be recovered from the petitioner. The case is based on documentary evidence and all the documents are either in the police custody or with the Company. The allegations as levelled in the FIR are yet to be established by way of scientific evidence by proving that the technical glitch occurred in the software of the Company, of which, unlawful and wrongful benefit was taken by other persons while transferring the amount into their accounts. Even the intention or lapse on the part of officials of the complainant Company can be proved during evidence before the trial Court. Nothing is to be recovered from the petitioner. Learned counsel also submits that one co-accused namely Tara Chand Bhargav has approached this Court by way of filing CRM-M No.3460 of 2018 and he was granted

anticipatory bail which was made absolute vide order dated 05.04.2018. The bail petition filed by the petitioner was dismissed by the Court below without mentioning any sufficient reason and by stating that second petition was not maintainable, whereas it was filed after the changed circumstances. Learned counsel also submits that allegations are of economic offences and the offences are triable by Magistrate. Petitioner is in custody since 08.11.2017. The allegations are matter of evidence which shall be tested by the trial Court during course of trial. In support of his arguments, learned counsel for the petitioner has relied upon judgments of Hon'ble Supreme Court in cases ***Sanjay Chandra Vs. CBI Criminal Appeal No.2178 of 2011 (Arising out of SLP (Crl) No.5650 of 2011) decided on 23.11.2011, Manoranjana Singh @ Gupta Vs. Central Bureau of Investigation 2017(1) R.C.R. (Criminal) 1025, Sandeep Jain Vs. National Capital Territory of Delhi rep.by Secretary, Home Deptt. 2000(1) R.C.R. (Criminal) 517, Sheikh Ayub Vs. State of M. P. 2006(2) R.C.R. (Criminal) 63, Shyam Singh Vs. State through C.B.I. 2006(9) SCC 169, judgment of this Court in case Lalit Khurana Vs. State of Punjab CRM-M No.18477 of 2018 decided on 20.07.2018 and judgment of Bombay High Court in case Vyomesh Shah and others Vs. State of Maharashtra 2018(1) R.C.R. (Criminal) 791.***

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that huge amount is involved in the present case and the petitioner may abscond and may misuse concession of bail in case he is released on bail. He also submits that serious offence has been committed by him.

Learned counsel for the complainant has also vehemently opposed the submissions made by learned counsel for the petitioner and submits that the petitioner has played active role in the commission of offence and the amount was transferred even to the account of other persons through him and does not deserve concession of bail.

Heard arguments of learned counsel for the petitioner and learned State counsel as well as learned counsel for the complainant. I have also perused the contents of the FIR and other documents on the file.

No doubt personal liberty is precious value of our Constitution of India. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution. Even the accused persons are entitled to freedom and every opportunity to look after his case and to establish his innocence. A person, who is on bail, has a better chance to prepare and present his case than the person, who remanded in custody. An accused person, who enjoys freedom, is in a much better position to look after his case and properly defend himself than if he was in custody. Accordingly, it is stated that grant of bail is the rule and refusal is the exception as stated in judgments rendered by Hon'ble the Apex Court in ***Anil Mahajan vs. Commissioner of Customs and another, 84 (2000) DLT 854, Gurcharan Singh and others Vs. State (Delhi Administration), AIR 1978 Supreme Court 179 and Gudikanti Narasimhulu and others Vs. Public Prosecutor, AIR 1978 Supreme Court 729.***

Delhi High Court in ***H.B. Chatruvedi vs. C.B.I., 2011(6) RCR***

(Criminal) 2402, has summarized the legal position under the similar circumstances as follows: -

"14. The legal position emerging from the above discussion can be summarised as follows :

(a) Personal liberty is too precious a value of our Constitutional System recognised under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.

(b) As a presumably innocent person the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to look after his case Bail Appln. 572/2010 Page 5 of 12 and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal

Procedure Code. But the said discretion should be exercised judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437(1), there is no ban imposed under Section 439(1) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for bail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or

the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are: (i) the likelihood of the accused fleeing from justice and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favor of granting bail subject to sub-section 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1)

of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other non-bailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.”

In the present case, the allegations in the FIR are not disputed. Admittedly, the investigation has been completed as not only the challan has been presented but even the charges have been framed. It is also not disputed that all the documents are in custody of the complainant or with the investigating agency, but are now with the trial Court after presentation of final report. Even the mobiles and E-Wallets have been taken in the custody during investigation.

No doubt while granting bail the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, severity of the punishment which conviction will entail, the character of the accused and facts and circumstances of the case. It is also one of the factors while considering the bail that that is a reasonable possibility of securing the

presence of the accused during trial and reasonable apprehension of the witnesses being tampered with. The larger interest of the public/State and some other similar considerations are also there. However, for the purpose of granting bail, the Legislature has used the words “reasonable grounds for believing” instead of “the evidence”, which means the Court while dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and the prosecution will be able to produce *prima facie* evidence in support of the charges. At this stage, it is not expected to have the evidence establishing the guilt of the accused beyond reasonable doubt. It has been held in various judgments of this Court as well as Hon'ble the Apex Court that in economic offence, the view point is to be taken differently with different approach in case of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be taken seriously and considered as grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country as has been held by Hon'ble Apex Court in judgment of case ***Nimmagadda Prasad Vs. Central Bureau of Investigation AIR 2013 SCC 2821.***

It is a settled preposition of law that while granting bail though the Court may impose reasonable conditions as it thinks fit but the object of putting conditions is to avoid the possibility of the person hampering investigation. The discretion of the Court while putting condition is to be in exercise of judicial discretion. In an offence under Sections 409 and 420 IPC, the Court is certainly not going to recover the alleged amount as a

condition to grant bail. In other words, reasonable conditions can be incorporated in exercise of judicial discretion and purpose of putting such conditions is to secure the presence of accused at the time of trial/hearing of the case before the trial Court.

Accordingly, without commenting anything on the merits of the case as allegations are matter of evidence to be tested by the trial Court during the course of trial and by considering that the petitioner is in custody since 08.11.2017 and also the fact that report under Section 173 Cr.P.C. has been submitted before the trial Court, the offences are triable by Magistrate, co-accused has been released on anticipatory bail, which has been made absolute and also by considering the judgment of Hon'ble the Apex Court in case ***Manoranjana Singh alias Gupta's*** case (supra), wherein the concession of bail has been granted to the accused persons who were involved in a big scam, the present petition is allowed and the petitioner is directed to be released on regular bail to the satisfaction of the trial Court subject to following conditions :-

- (1) The petitioner shall furnish a personal bond in the sum of ₹10 lacs (Rupees Ten Lacs) with the sureties in the like amount to the satisfaction of the trial Court.
- (2) The petitioner shall surrender his passport, if already not seized, any hold by him, before the trial Court.
- (3) He shall not leave country without permission of Court.
- (4) He shall not tamper with the evidence or do any act which will create a reasonable ground to assume that the petitioner is

trying to create hurdle in the investigation or trial of the case which will entail cancellation of bail.

(5) Any other condition which may be imposed by the trial Court.

Dated: 17.09.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No