

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

287

CRM-M-41952-2019

Date of decision: 25.11.2019

Rajender

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Sanjay Verma, Advocate for the petitioner.

Mr. Arjun Singh Yadav, AAG, Haryana.

ARUN KUMAR TYAGI, J (ORAL)

Prayer in this petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C") is for grant of anticipatory bail to the petitioner in case FIR No.121 dated 28.02.2019 registered under Sections 379, 420 and 511 of the Indian Penal Code, 1860 at Police Station Sirsa City, District Sirsa.

Notice of motion in this case was issued on 30.09.2019.

Learned State Counsel has appeared on behalf of the respondent-State and opposed the bail application.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

Learned counsel for the petitioner has argued that the petitioner was not apprehended on the spot. He was implicated on the basis of disclosure statement of co-accused. There was no swapping of the ATM card of the complainant and no amount was withdrawn from the account of the complainant and no loss was caused to him. The petitioner is ready to join the investigation and he may be ordered to be released on interim anticipatory bail.

On the other hand, learned State counsel has argued that

the petitioner along with his co-accused Amardass is alleged to have used some machine for copying the data from ATM at the time of use of his ATM card on ATM machine by the complainant on which the complainant became suspicious and caught hold of co-accused while the petitioner managed to escape. Swapping machine and 12 ATM cards of different banks were recovered from his co-accused. Learned State counsel on instructions from ASI Tarsem Singh, CIA Sirsa has submitted that custodial interrogation of the petitioner is required and that the petitioner is involved in seven other cases of theft and cheating out of which he has been acquitted in one case but he is facing trial in six other cases of similar nature. Learned State counsel has accordingly submitted that the petitioner does not deserve grant of anticipatory bail and the petition may be dismissed.

Keeping in view the facts and circumstances of the present case and the fact that thorough investigation of the matter is required to be made as to involvement of the petitioner in the crime and also as to similar crimes committed and number of persons cheated and custodial interrogation of the petitioner is necessary for the purpose but without commenting on merits of the case, I am of the considered view that the petitioner does not deserve the concession of anticipatory bail. Therefore, the petition is dismissed.

However, before parting with this case, it may be observed that cases of fraud involving use of ATM for unauthorized withdrawal of money from the bank accounts of persons by cloning of their ATM cards or by seeking disclosure of the relevant information from them are on the increase. It appears that when such cases are reported to the

police no serious and thorough investigation is made to collect all relevant electronic evidence available. In the present case swapping machine and 12 ATM cards were allegedly recovered from possession of co-accused Amardass. The petitioner is alleged to be present in the ATM and to have participated in the crime. On being asked as to whether CCTV footage of the concerned ATM of the day of occurrence was seized by the police or not, learned State counsel on instructions from ASI Tarsem Singh has submitted that the CCTV footage was not seized. FIR was registered on 28.02.2019 but no serious efforts were made by the investigating officer to effect the arrest of the petitioner despite the fact that the number of the car by which he fled was also given. There is, therefore, an urgent need of issuance of appropriate directions by the Director General of Police, Haryana regarding the nature of electronic evidence available in such cases and the manner of collection of the same and also taking of appropriate disciplinary action against the investigating officers deliberately/negligently suffering destruction of such evidence due to their failure to collect the same.

A copy of this order be sent to Director General of Police, Haryana for issuing appropriate instructions in this regard and also for directing the concerned competent authority to take such disciplinary action against the investigating officer of the case for his failure to seize CCTV footage of the concerned ATM as may be considered appropriate.

25.11.2019

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No