IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17635 of 2020
Date of Decision: 17.08.2020

Chandan Kumar

...... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Abhishek Goyal, Advocate,
for the petitioner.

Mr. Gurbir Dhillon, AAG, Haryana.

*****

<u>AMOL RATTAN SINGH, J. (ORAL)</u>

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

On 07.07.2020, the following order had been passed:-

"All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 Pandemic.

By this petition, the petitioner seeks the concession of anticipatory bail, upon FIR no.54, dated 15.7.2019, having been registered against him at Police Station Cyber Crime, Gurugram, alleging therein the commission of offences punishable under Section 420 of the IPC, and Section 66(d) of the Information Technology (Amendment) Act, 2008.

Learned counsel for the petitioner submits that though the allegation is that the money transferred from the complainants' account was to the petitioners' account, the said account was last operated by the petitioner on 1.1.2017, with the first part of the *money from the complainants' account having been transferred (Rs.62,000/-), on 20.12.2018, and with in fact the petitioner also having been levied charges by the bank for not maintaining the necessary minimum amount in the bank.*

He further submits that the telephone which was received by the complainant/to which he made a phone call, has not been found to be in the name of the petitioner and that the petitioner in fact was in Imphal (Manipur) on the date that the complainant is stated to have had a telephonic conversation on that number, as is given in the FIR.

Notice of motion.

Mr.P.P.Chahar, learned DAG, Haryana, accepts notice at the asking of the court, he already having received an advance notice of the petition.

Mr.Chahar submits that as regards the telephone that was used, it was found to be in the name of a fictitious person by the name of Dhandev Singh with the address given to the Reliance Jio telecommunication company being completely false.

He therefore submits that with the account having been admittedly operated by the petitioner even before 2018, he cannot claim to be innocent.

He further submits that the call to the complainant/by the complainant was traced to Dhanbad (Jharkand) which is not too far from the petitioners' place of residence in District Banka, Bihar.

Mr.Chahar has also submitted that the money was withdrawn from the petitioners' account by way of ATM withdrawals and the bank has certified to the effect that no CCTV footage is retained in the ATM booths one month after each date.

In rebuttal, learned counsel for the petitioner reiterates what he has already submitted and submits that the petitioner would join investigation and in fact his presence at Imphal on the dates concerned can be verified by the investigating agency.

He further submits that those who are indulging in this kind of fraud, are always very well organised and therefore would apply all kinds of methods to obtain the necessary codes etc. by hacking the *websites concerned.*

Keeping in view the contentions raised today on both sides but without making any actual comment on the merits thereof, to enable the petitioner to try and prove that he was actually in Imphal and possibly may not be connected to the entire scam (if at all that is so), the petitioner is directed to join investigation and upon him so joining if he is sought to be arrested, he shall be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the investigating officer does not actually join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation, in terms of the order of this Court.

The concerned Deputy Commissioner of Police in Gurugram is directed to go into the matter and to get an affidavit of a gazetted officer filed with regard to the investigation carried out, including with regard to the contentions raised on behalf of the petitioner today.

Adjourned to 30.7.2020."

Thereafter, an affidavit of the Deputy Commissioner of Police, Gurugram, has been filed, a copy of which has been sent by 'Whatsapp communication' to the Reader of this court, who in turn has forwarded it to me, with a copy also having been sent by learned State counsel to learned counsel for the petitioner.

A perusal thereof shows that Rs.62,000/- was found to have been credited to the account of the petitioner and upon the petitioner joining investigation, though he stated that he had remained in Imphal from 2016 to 2018, however he also admitted that he had come to visit his house in District Banka

(Bihar) from time to time, and though he could not produce any proof of his having resided at Imphal, it is further stated that the withdrawals were by means of Automated Teller Machine (ATM), from the petitioners' account, with some of the withdrawals having been made in Devdhar Saria Haat, Dumka, Jharkhand, as also from Imphal.

It has next been stated that due to the time lapse, neither the CCTV footage could be obtained from the bank nor could the phone call details of the mobile phone used by the petitioner be obtained for the period in question, but the petitioner also could neither produce any proof that he had lost his ATM card as he had contended before the investigating agency, nor even did he produce any proof to the effect that the ATM card had been got blocked by him due to any misuser thereof.

Though learned counsel for the petitioner had forwarded to the Reader of this court a bank account statement stated to be pertaining to the bank account of the petitioner, from which he wishes to substantiate that he did not 'use' the bank account for a long time, however I do not find myself in agreement with learned counsel, because of far too many 'co-incidences' pertaining to the petitioners' account itself, including the fact that some money was withdrawn from Imphal, with the petitioner even as per his own statement, residing between 2016 to 2018.

Learned counsel for the petitioner however further submits that the withdrawal from Imphal was on December 06, 2020, with the amount of Rs.62,000/- admittedly having been credited to his bank account only on December 20, 2018 and hence, the withdrawal from Imphal could have no bearing on the controversy in question.

Learned State counsel counters to the effect that it has also been determined from the bank that regular messages with regard to the withdrawal s were being sent to the petitioners' registered mobile number and consequently, the petitioner cannot take that plea, especially as he could not show that either he got lodged any complaint with regard to his ATM/debit card having been stolen, or with regard to him advising the bank to block his card for any misuser thereof.

Keeping in view the above, I see no reason to entertain this petition any further, which is consequently dismissed, with the interim order vacated.

However, it is made clear that nothing stated either in this order or in the previous orders, will be taken to be an observation of this court on the merits of the case, but only in the context of a petition invoking jurisdiction under Section 438 of the Cr.P.C.

Naturally, all investigation will carry on as per evidence gathered and if the matter goes to trial eventually, the trial court would also, equally obviously, consider the matter as per the evidence led before it.

August 17, 2020 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No