IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

101

CRM-M-5903-2020
Date of decision: 25.08.2021

MUKESH RUSTAGI AND ANOTHER .....Petitioners

Versus

STATE OF HARYANA .....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. R.S. Cheema, Sr. Advocate with
Mr. Arshdeep Singh Cheema, Advocate
for the petitioners.

Mr. Sumit Jain, Addl. A.G. Haryana
for the respondent-State.

Mr. Prithvi Raj Yadav, Advocate
for the complainant.

Mr. Karan Goel, ACP, Incharge of the SIT and
Mr. Amitava Chatterjee, Chief General Manager,
State Bank of India, Local Head Office, New Delhi
in person through video conferencing.

****

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

1. The petitioners have filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of anticipatory bail in case FIR No.151 dated 10.06.2019 registered under Sections 188, 201 and 420 of the Indian Penal Code, 1860 at Police Station, Sector-37, Gurugram.

2. The above said FIR was registered on written complaint dated 09.06.2019 submitted by complainant Lila Ram to the SHO, Police Station, Sector-37, Gurugram. In his complaint Lila Ram alleged that he is resident of village Mohammadpur Jharsa District Gurugram

and is an agriculturist by occupation. His land was acquired for which he received an amount of Rs.1,65,00,000/- as compensation which amount was credited in his account. Some unknown person had fraudulently withdrawn amount of Rs.1,37,46,308/- from his account. He came to know about the same on that very day and was accordingly making the complaint.

3. The police investigated the case. During investigation, it was found that the fraudsters got the mobile phone number of the complainant linked to his bank account changed and intercepted cheque book and ATM Debit Card issued on their request and dispatched to the Account Holder's address by taking delivery in the post office.

4. On investigation the police arrested Sanjeev Yadav and Hari Singh and filed police report/challan against them on the allegations that the mobile phone handset in which the mobile SIM used in committing the fraud was inserted and used belonged to accused Sanjeev Yadav which had been given to accused Hari Singh and had been disposed of by him. Petitioner No.1 Mukesh Rustagi was cited as prosecution witness in the charge-sheet filed against the above said accused.

5. Apprehending their arrest for commission of above said offences, the petitioners have filed present petition for grant of anticipatory bail.

6. Vide order dated 13.02.2020 this Court had granted interim anticipatory bail to the petitioners with direction to join the investigation and relevant part of the above said order reads as under:

> *"Learned Counsel for the petitioners has submitted that petitioner No. 1 is the Manager who was not required*

to deal and did not deal with the application for change of mobile phone number and issuance of cheque book and ATM Debit Card. The petitioner No. 2 is Deputy Manager, who on both the applications for change of mobile phone number and issuance of cheque book and ATM Debit Card having been put up before him verified the same. The cheque book and ATM Debit Card were sent to the account holder's address and the petitioners had no role in interception of the same by the fraudesters. On change of mobile phone number, system generated SMS would have also gone to the complainant account holder. The petitioners are not involved in the crime and are ready to join the investigation.

On the other hand, learned State Counsel has submitted that the petitioners in breach of the prescribed procedure changed the mobile phone number linked to the account of the complainant due to which messages regarding withdrawal of the amounts could not be sent to the complainant's mobile number. However, learned State Counsel seeks time to file reply regarding their complicity in the crime.

Adjourned to 20.02.2020.

In the meanwhile, the petitioners are directed to join the investigation as and when called upon to do so. In the event of their arrest, the petitioners shall be released on interim bail by the arresting officer/investigating officer on furnishing of bail bonds by them to the satisfaction of the arresting officer/investigating officer. The petitioners shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which they shall not be entitled to the protection of interim bail allowed to them."

7. The petition has been opposed by the State in terms of reply dated 13.08.2021 filed by way of affidavit of Sh. Karan Goel, HPS, Assistant Commissioner of Police, DLF, Gurugram in the Registry and status report dated 24.08.2021 filed by way of affidavit of Sh. Karan Goel, HPS, Assistant Commissioner of Police, DLF, Gurugram through e-mail, print out of which is taken on record.

8. I have heard Mr. R.S. Cheema, learned Senior Counsel for the petitioners, Mr. Sumit Jain, learned State Counsel for the respondent-State and Mr. Prithvi Raj Yadav, learned Counsel for the

complainant and have gone through the record.

9. Learned Senior Counsel for the petitioners has, while reiterating the submissions made earlier on 13.02.2020, referred to report dated 20.11.2019 of the Chief General Manager, State Bank of India, Local Head Office, New Delhi and submitted that in the report it has been mentioned that on 18.03.2019 the registered mobile number of the account of the complainant was changed from 9313382296 to 7303637397 on the strength of application dated 11.02.2019. The application was handed over by a suspected person on 11.03.2019 to Shri Bharat Singh, who came to the branch on deputation as Mr. Umakant Sharma was on leave w.e.f. 05.03.2019 to 15.03.2019. It can be possible that the application submitted on 11.03.2019 by the suspected person was the same which was fed in system on 18.03.2019 by Mr. Umakant Sharma but it is quite difficult to ascertain as the application was dated 11.02.2019. By using INB the fraudster had transferred the funds in different accounts through RTGS and ATM cards at different ATMs and POS machines. The person who visited the branch on 11.03.2019 and 28.03.2019 looks similar to the person who was withdrawing the money at the ATMs as per the CCTV footage of ATMs, so it is evident that some outsider had withdrawn/transferred the money from Sh. Lila Ram's account by using fraudulently obtained ATM cards and INB. There were lapses/negligence on the part of staff but connivance with the fraudster or mala fide intentions were not evidenced.

10. Learned Senior Counsel for the petitioners has further submitted that in compliance with order dated 13.02.2020, the

petitioners have joined the investigation. The relevant documents have already been seized by the police and any other document, if required, can also be seized from the bank. The petitioners were not involved in commission of the subject offences in any manner and were not beneficiary of the transactions and did not receive any amount from any of the persons involved in the crime. Custodial interrogation of the petitioners is not necessary for making any recovery. Therefore, the petitioners may be granted anticipatory bail by confirming interim anticipatory bail already granted to them.

11. On the other hand, learned State Counsel has submitted that SIM used by the fraudster in the present case was one of the 500 SIMs which were fraudulently got issued from the concerned service provider. Accused Amit Chandna, Hitesh Goyal and Prem Kumar have been arrested on 12.08.2021. Parveen Mittal, the main accused and fraudster who fraudulently withdrew the amount has also been arrested on 19.08.2021. The fraudsters got the mobile phone number of the complainant changed and also got cheque book and ATM Card issued from the bank which was not possible without involvement of the petitioners and other bank officers/officials. In view of the nature of accusation and gravity of offences, the petitioners do not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

12. However, learned State Counsel has acknowledged that in compliance with order dated 13.02.2020 passed by this Court, the petitioners had joined the investigation and that their custodial interrogation is not now required in the present case.

13. In view of the facts and circumstances of the case, nature

of accusation and evidence against the petitioners, role attributed to them, the fact that custodial interrogation of the petitioners is not required in the case and there is no material to justify the apprehension of the petitioners fleeing from justice or tampering with evidence or criminally intimidating the prosecution witnesses, but without expressing any opinion on the merits of the case, I am of the considered view that the petitioners deserve grant of anticipatory bail.

14. In view of the above, the petition is allowed and order dated 13.02.2020 granting interim bail to the petitioners is made absolute. However, the petitioners shall join the investigation again if and as and when called upon to do so and shall abide by the conditions enumerated in Section 438 (2) of the Cr.P.C., failing which the protection of anticipatory bail order shall not be available to them.

15. Before parting with this case, it may be observed that in hearing a petition for grant of anticipatory bail this Court is primarily concerned with the question of grant/declining of anticipatory bail to the petitioner but this Court cannot ignore its constitutional obligation to ensure on the one hand proper and fair investigation by the police and also fair trial on cases placed before the Court which has to be fair not only to the accused but also to the victim and the society and also on the other protection and enforcement of the rights not only of the accused but also of the victim particularly his right of access to justice in accordance with law.

16. In ***Suresh and another Vs. State of Haryana : 2015(1) R.C.R. (Criminal) 148***, Hon'ble Supreme Court held that on being satisfied on an application or on its own motion, the Court ought to

direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim.

17. Vide order dated 16.08.2021, notice was issued to the Chief General Manager, State Bank of India, Local Head Office, New Delhi for personal appearance before this Court through video conferencing with the record regarding the following aspects:-

> (i) Whether any departmental proceedings have been initiated against the bank officers/officials alleged to be negligent as mentioned in the above-said report; and
>
> (ii) Whether the bank has taken any action for reimbursement of the amount fraudulently withdrawn from account of the complainant due to negligence on the part of its officers/officials contributing to such fraud.

18. In compliance with order dated, Mr. Amitava Chatterjee, Chief General Manager, State Bank of India, Local Head Office, New Delhi appeared before this Court through video conferencing.

19. On being asked as to whether there was any negligence on the part of the officers/officials of the bank and whether the policy of the SBI provides for reimbursement of the defrauded amount to the innocent victim, Mr. Amitava Chatterjee, Chief General Manager, SBI stated that the State Bank of India has the policy under which victim subjected to fraud is reimbursed the defrauded amount but in the present case, there are certain “leads/clues” indicating/pointing to involvement of the complainant or some persons closely known or

related to him in the crime. Mr. Amitava Chatterjee, Chief General Manager, SBI also pointed out that departmental proceedings against the concerned officers/officials of the bank had also been concluded.

20. In view of these facts and circumstances of the case, copies of the enquiry report were ordered to be placed on record and the respondent-State was directed to file status report regarding the investigation with respect to the aspects of involvement of the complainant or any person closely known or related to him in the crime.

21. In compliance with order dated 23.08.2021, status report by way of affidavit of Karan Goel, HPS, Assistant Commissioner of Police, DLF, Gurugram has been filed on behalf of the respondent-State that during the course of investigation conducted by the SIT till date, no such clue has come forth which may indicate involvement of the complainant or any person closely known or related to him, in the crime. However, it has come forth during investigation that as soon as the complainant came to know about the fraud committed with him, he immediately informed State Bank of India with the request to block the ATM Card etc. as well as to the police for legal action, upon which the present FIR was registered by the police.

22. In compliance with order dated 23.08.2021, copy of the enquiry report dated 18.08.2021 has been produced whereby allegation No.2 as to failure to tally the photograph/identification of customer was held to be substantiated and allegation No.3 of loss to the bank was held to be partly substantiated against delinquent bank official Umakant Sharma.

23. Mr. Amitava Chatterjee, Chief General Manager, SBI has

stated that the bank will as per its policy pay the amount of Rs.1,37,46,308/- to the complainant while reserving rights of the bank subject to final determination of the matter by the Civil/Criminal Court.

24. Learned Counsel for the complainant has submitted that the bank may be asked to pay the amount with interest as per its policy.

25. Mr. Amitava Chatterjee, Chief General Manager, SBI has submitted in reply that the bank cannot at this stage make any final payment as investigation is pending and even the writ petition filed by the complainant is pending before the Division Bench and therefore, final payment will be subject to the investigation/trial and decision of the writ petition.

26. Accordingly, the bank is directed to take expeditious steps for making payment of amount of Rs.1,37,46,308/- to the complainant at the earliest subject to final determination of the rights of the bank qua the complainant on conclusion of investigation/trial in the present case and decision of the writ petition filed by the complainant.

27. Since the number of cases of such frauds involving fraudulent withdrawal of amount from accounts of the innocent customers by seeking vital information regarding their accounts, debit cards, OTPs etc. are on the increase the investigating agencies/instrumentalities of the State and the banking authorities must take appropriate steps to safeguard the interest of such innocent customers of the bank against such frauds. This Court is aware that numerous steps, which have also proved effective in preventing fraud, have already been taken yet it will be appropriate that whenever information regarding such frauds and transfer of the amount defrauded

to other bank accounts is received by the police/bank authorities from bank statements or other authentic source, immediate steps be taken to freeze such accounts to the extent of the defrauded amounts received therein so that refund of the same to the innocent victims can be ensured.

28. Accordingly, the Director Generals of Police, Punjab, Haryana and U.T., Chandigarh and the Regional Director, Reserve Bank of India, Chandigarh are directed to consider, in their joint meeting or such other manner as may be considered appropriate, the matter of evolving appropriate workable mechanism and issuance of requisite instructions to the concerned banks in the region in this regard.

29. A copy of this order be supplied to learned State Counsel and be also sent to the Director Generals of Police, Punjab, Haryana and U.T., Chandigarh and the Regional Director, Reserve Bank of India, Chandigarh for ensuring requisite compliance with the same.

25.08.2021 **(ARUN KUMAR TYAGI)**
Vinay **JUDGE**

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